

No. 9506

United States
Circuit Court of Appeals

For the Ninth Circuit.

vol

2225

ILENE WARREN alias SPEED WARREN,
Appellant,

vs.

THE TERRITORY OF HAWAII,
Appellee.

Transcript of Record
In Three Volumes

VOLUME I

Pages 1 to 310

Upon Appeal from the Supreme Court
of the Territory of Hawaii

FILED

AUG 9 - 1940

PAUL P. O'BRIEN,
CLERK

No. 9506

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic: and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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day of August, 1937, with force and arms, unlawfully, feloniously, wilfully and of her malice aforethought, and without authority and without justification and without extenuation by law, did kill and murder one Wah Choon Lee, a human being then and there being, and did then and there and thereby commit the crime of murder in the second degree, contrary to the form of the statute in such case made and provided.

Second Count:

And the Grand Jury of the First Judicial Circuit of the Territory of Hawaii, in order to charge the said Ilene Warren alias "Speed" Warren with the crime of murder in the second degree, arising from the same criminal acts and transactions [2] as hereinabove set forth in the first count hereof, in different form and count, do further say and present that Ilene Warren alias "Speed" Warren, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on the 3rd day of August, 1937, with force and arms, unlawfully, feloniously, wilfully and of her malice aforethought and without authority and without justification and without extenuation by law did then and there, and while the hands and body of one Wah Choon Lee were in contact with a certain metal plate then and there being, cause the said metal plate to be charged with a deadly charge of electric current, and the said Ilene Warren alias "Speed" Warren did then and there and thereby

electrocute and give to him, the said Wah Choon Lee, certain mortal injuries, from which said electrocution and mortal injuries the said Wah Choon Lee did thereafter and on, to-wit, the said 3rd day of August, 1937, die; and that so in manner and form aforesaid, and at the time and place aforesaid, the said Ilene Warren alias "Speed" Warren unlawfully, feloniously, wilfully and of her malice aforethought, and without authority and without justification and without extenuation by law, did kill and murder the said Wah Choon Lee, and did then and there and thereby commit the crime of murder in the second degree, contrary to the form of the statute in such case made and provided.

Third Count:

And in order to set forth the unlawful and felonious acts of the said Ilene Warren alias "Speed" Warren, mentioned in the first and second counts hereof, in different form and [3] count, to meet the proof, the Grand Jury aforesaid do further say and present that Ilene Warren alias "Speed" Warren, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on the 3rd day of August, 1937, with force and arms, unlawfully, feloniously, wilfully and of her malice aforethought and without authority and without justification and without extenuation by law did cause a certain metal plate to be charged with a deadly charge of electric current, she, the said Ilene Warren alias

“Speed” Warren well knowing at the time when she so caused the said metal plate to be charged with electricity as aforesaid that the said Wah Choon Lee was about to bring and would bring the hands and body of him, the said Wah Choon Lee, into contact with the said metal plate; and that thereafter, and while the said metal plate was charged with electricity as aforesaid, the said Wah Choon Lee did bring his body and hands into contact with the said metal plate and by reason thereof the said Wah Choon Lee was electrocuted and did receive certain mortal injuries, from which electrocution and mortal injuries the said Wah Choon Lee did thereafter and on, to-wit, the said 3rd day of August, 1937, die; and that so in manner and form aforesaid, and at the time and place aforesaid, the said Ilene Warren alias “Speed” Warren unlawfully, feloniously, wilfully and of her malice aforethought, and without authority and without justification and without extenuation by law, did kill and murder the said Wah Choon Lee, and did then and there and thereby commit the crime of murder in the second degree, [4] contrary to the form of the statute in such case made and provided.

A true bill found this 5th day of August, 1937.

(s) HANS H. HARDERS

Foreman of the Grand Jury

Assistant

(s) CHAS. E. CASSIDY

Public Prosecutor of the City
and County of Honolulu

Indictment presented and filed at 5 o'clock P. M.
Aug. 5, 1937.

(s) CLAUD ROBERTS

Clerk

Arraignment.....

Plea.....

Copy of the within Indictment before arraignment furnished.

In the Circuit Court of the First Circuit
Territory of Hawaii

January Term A. D., 1938

Criminal No. 14332

Honorable Louis Le Baron, First Judge Presiding
THE TERRITORY OF HAWAII,

vs.

ILENE WARREN alias "SPEED" WARREN,
Defendant.

VERDICT

We the jury, in the above entitled cause, find the defendant guilty of manslaughter, leniency recommended.

(s) PATRICK JOHN O'SULLIVAN
Foreman

February 18, 1938.

[Endorsed]: Filed February 18, 1938. O. Sezen-
evsky, Clerk. [6]

In the Supreme Court of the Territory of Hawaii

No. 2376

Error Criminal No. 14332 from Circuit Court, First
Judicial Circuit, Honorable Louis Le Baron,
Presiding.

THE TERRITORY OF HAWAII,
Plaintiff and Defendant-in-Error,

vs.

ILENE WARREN alias "SPEED" WARREN,
Defendant and Plaintiff-in-Error.

PETITION FOR APPEAL

To the Honorable, the Chief Justice and Associate
Justices of the Supreme Court of the Territory
of Hawaii:

Ilene Warren alias "Speed" Warren, Defendant
herein, deems herself aggrieved by the Judgment
of the Supreme Court of the Territory of Hawaii
made and entered on October 20th, 1939, pursuant
to the Opinion and Decision of said Court made
and entered on the 20th day of October 1939, and
the Decision on Petition for Re-hearing of said
Court rendered and filed on November 25th, 1939,
and hereby appeals to the Circuit Court of Appeals
for the Ninth Circuit from said Judgment for the
reasons specified in the Assignment of Errors hereto
attached, and she prays that this appeal may be

allowed and that a transcript of the record and proceedings upon which said Judgment and Decree were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit and that said Judgment and Decree may be reversed. [70]

Dated at Honolulu, Hawaii, this 20 day of February, A. D. 1940.

ILENE WARREN alias
"SPEED" WARREN,
Defendant-Appellant,
By CHARLES B. DWIGHT,
Her Attorney. [71]

Receipt of a copy of the within acknowledged this 20 day of February, 1940.

KENNETH E. YOUNG,
Attorney for Territory of Hawaii.

[Endorsed]: Filed Feb. 21, 1940. Gus K. Sproat, Deputy Clerk, Supreme Court. [69]

[Title of Supreme Court and Cause.]

NOTICE OF APPEAL

Now comes Ilene Warren, alias "Speed" Warren, Defendant Appellant above named, and gives Notice of Appeal from the Judgment of the Supreme Court of the Territory of Hawaii made and entered on the 20th day of October, 1939, affirming the Judgment and Sentence of the Circuit Court of the First

Judicial Circuit, Territory of Hawaii, to the Ninth Circuit Court of Appeals.

Dated at Honolulu, Hawaii, February 20, 1940.

ILENE WARREN alias
 "SPEED" WARREN,
 Defendant-Appellant,
 By CHARLES B. DWIGHT,
 Her Attorney. [73]

ORDER ALLOWING APPEAL

Upon filing by the Defendant-Appellant, Ilene Warren, alias "Speed" Warren, of a bond in the sum of \$250 with good and sufficient sureties, the appeal in the above entitled cause is hereby allowed.

JAMES L. COKE,
 Chief Justice. [74]

Receipt of a copy of the within acknowledged this 20th day of Feb., 1940.

KENNETH E. YOUNG,
 Attorney for Territory of Hawaii.

[Endorsed]: Filed Feb. 21, 1940. Gus K. Sproat, Deputy Clerk, Supreme Court. [72]

[Title of Supreme Court and Cause.]

ASSIGNMENT OF ERRORS

Now comes Ilene Warren, alias "Speed" Warren, Defendant above named, by Charles B. Dwight, her attorney, and files the following Assignment of Errors, upon which she will rely in the prosecution

of her appeal in the above entitled cause from the Judgment entered herein on the 20th day of October, 1939, dismissing the Writ of Error of Defendant from the Verdict, Judgment and Sentence of the Circuit Court, First Judicial Circuit, of the Territory of Hawaii, and sustaining the Verdict, Judgment and Sentence of said Circuit Court, and from the Decision upon Petition for Rehearing, which petition was duly filed within the term and within the time required by the rule of the Court, which Decision was entered herein on the 25th day of November, 1939.

I.

That the Supreme Court of the Territory of Hawaii [76] erred in dismissing the Writ of Error of the Defendant from the Verdict, Judgment and Sentence made and entered on the.....day of....., 1938, of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, and in sustaining the Verdict, Judgment and Sentence of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, which Judgment of the Supreme Court was made and entered on the 20th day of October, 1939, pursuant to a Decision made and entered on the 20th day of October, 1939.

II.

That the Supreme Court of the Territory of Hawaii erred in dismissing the Defendant's Petition for a Rehearing in the Supreme Court, which Decision was rendered and filed on November 25th, 1939.

III.

That the Supreme Court of the Territory of Hawaii erred in holding and finding that the evidence of Edward J. Burns, a witness for the Territory of Hawaii, concerning his observations in the home of the Defendant on the night of August 3, 1937, was competent and admissible and in sustaining the ruling of the Circuit Court overruling the objection of the Defendant and in denying the motion to strike, upon the ground that the entry into the home of Defendant was illegal and violative of the Fourth and Fifth Amendments to the Constitution and that the admission of said evidence violated Defendant's rights under the Fourth and Fifth Amendments to the Constitution.

In the Circuit Court, the witness, Edward J. Burns, upon being duly sworn, testified that he was a police officer [77] having joined the Department on November 16, 1936, and worked as a foot patrolman; that on August 3, 1937, he was assigned to special duty with Captain Caminos; thereupon the Defendant objected as follows:

“Mr. Dwight: May it please the Court, at this time I want to object to the testimony of this witness upon the ground that it is incompetent, irrelevant and immaterial; * * * upon the further ground that any evidence of this witness by observation in the house was illegal and in violation of the Fourth and Fifth Amendments of the Constitution.

The Court: The Court will overrule the objection.

Mr. Dwight: Save an exception.

The Court: The exception may be saved and noted."

(Tr. of Ev. p. 201.)

The witness then testified that he was assigned by Captain Mookini to go with Captain Caminos to raid the house of the Defendant; that he left Honolulu at 5:30 P. M., arrived at Wahiawa and left the Wahiawa Police Station at 8:45 P.M., in company with Captain Kalauli, Captain Caminos and four other officers. Thereupon the Defendant again objected as follows:

"Mr. Dwight: May I have an additional ground of objection, for the record, and that is that any evidence of this witness was secured without the consent of the defendant and in violation of her rights under the Constitution.

The Court: Objection overruled.

Mr. Dwight: Exception."

(Tr. of Ev. p. 202.)

The witness then testified that the group of seven officers left the station; that he separated from the group and [78] went to Defendant's place; that he wore a grey suit and black shoes and that all of the other officers were also in civilian clothes; that on reaching Defendant's home he knocked on the wall next to the door; no one answered so he re-

turned to the street; that he walked back and again knocked; that he saw someone look out of a window and heard footsteps; the door was opened by a woman, Billie Penland; that he followed her into the parlor and stopped by a wicker table and she asked a question, then he followed her into a room, where there was a bed, dresser and washstand, and as she stood by, the witness took off his tie, started to remove his coat and then had a conversation as a result of which he gave the woman three dollars; that the woman took the three dollars and left the room and took with her a basin of water, when she returned he was undressing, she left and returned again, when he had completed undressing, she went to the bed and removed her robe and sat on the bed; that he reached for his clothes, took out a handkerchief, police badge and whistle, blew the whistle three times, showed her the badge and told her she was under arrest for investigation; that he blew his whistle because that was a prearranged signal between Captain Caminos and his men and the witness that they were then to raid the house.

At the conclusion of the case in chief for the Territory of Hawaii the Defendant moved to strike the testimony as follows:

“Mr. Dwight: At this time I move to strike the testimony of Officer Burns or so much thereof as occurred subsequent to the time that he testified the defendant asked what he meant by breaking into this house, to-wit, everything

that he testified to subsequent to that point [79] when defendant entered the room downstairs upon the ground that the testimony is incompetent, irrelevant and immaterial; upon the ground that it was procured in violation of the defendant's rights under the Constitution, the Fourth and Fifth Amendments, and upon the further ground that at the time he was a trespasser upon the premises of the defendant in violation of the defendant's rights under the Constitution of the United States.

The Court: Motion denied.

Mr. Dwight: May I save an exception?

The Court: Exception noted."

(Tr. of Ev. pp. 501-502.)

That the Supreme Court of the Territory of Hawaii erred in sustaining the Circuit Court's action in overruling the objections of the Defendant and in denying Defendant's motion to strike for the following reasons:

(1) That the evidence was obtained as a result of an illegal entry and search of Defendant's home, without Defendant's consent, and in violation of the Defendant's rights under the Fourth and Fifth Amendments to the Constitution of the United States, and therefore, was incompetent and inadmissible.

(2) That the evidence was highly prejudicial to the Defendant and the overruling of Defendant's objections and denial of Defendant's motion to strike was prejudicial error.

IV.

That the Supreme Court of the Territory of Hawaii erred in holding and finding that the evidence of Lou Rodgers, a witness for the Territory concerning the electrical equipment in the home of the Defendant, was competent, relevant, material [80] and admissible; and in sustaining the denial by the First Circuit Court of Defendant's motion to strike upon the ground that the testimony was obtained as a result of an illegal search and that the admission thereof incriminated Defendant and violated Defendant's rights under the Constitution and the Fourth and Fifth Amendments thereof.

At the trial in the Circuit Court, the witness upon being duly sworn testified that the Defendant procured the material and that John Kiehm installed the electrical apparatus in the home of the Defendant; that the wires ran from the front and back doors to the transformer; the witness also located the switch and drew a picture of the transformer.

On cross-examination the witness further testified that she was questioned at the police station by Captain Hays, who exhibited to her the electrical equipment seized in Defendant's home and that every question he asked was based upon the electrical equipment and that her entire statement to the police was based upon the equipment that was in her presence and in answer to questions regarding it.

On redirect examination the witness testified that when the police had her at the station shortly after the death of Wah Choon Lee, they had some electrical equipment there and that it was the same equipment that was in the home of the Defendant when she lived there; and stated that that was how the police got the lead and that the police then questioned her as to what she knew personally about the equipment, how she knew it was in the house, how it was put in and all such things; and that all she told the police was based upon her memory and her own observations and not what she saw at the police station. (Tr. of Ev. p. 112). Thereupon the Defendant moved to strike [81] the testimony.

The motion to strike, the ruling of the Court thereon and the exception to the ruling are as follows:

“Mr. Dwight: At this time I move to strike the testimony of this witness upon the ground that it now affirmatively appears that the evidence the government is now offering by virtue of placing this witness on the stand was obtained as the result of an illegal search and that this evidence tends to incriminate this defendant and violates her rights under the Fourth and Fifth Amendments to the Constitution.” (Tr. of Ev. p. 119)

“The Court: The Court is ready to rule. This evidence which Mr. Dwight asked to be

stricken and excluded upon the ground that it is an invasion of the defendant's Constitutional rights under the Fourth and Fifth Amendments, in that he *argues is* based upon the evidence seized and the illegal search and seizure, is denied * * *

Mr. Dwight: May I suggest an exception?

The Court: You may."

(Tr. of Ev. p. 121)

At the conclusion of the case in chief of the Territory of Hawaii the Defendant again moved to strike the testimony of this witness, as follows:

"Mr. Dwight: I move to strike the testimony of Lou Rodgers * * * upon the ground that any evidence that she may have given in this particular case was based entirely upon the electrical equipment * * * that was ordered suppressed by this Court and the further ground that her entire testimony was adduced at this trial from knowledge gained by the law officers * * * when they made an illegal and invalid search in contravention of [82] defendant's rights under the Constitution.

The Court: Motion denied.

Mr. Dwight: May I save an exception?

The Court: Exception noted."

(Tr. of Ev. pp. 502-503)

That the Supreme Court of the Territory of Hawaii erred in sustaining the ruling of the Circuit Court denying the Defendant's motion to strike for the following reasons:

(1) That the evidence was obtained from an illegal source, to-wit, an illegal search and seizure, and the admission thereof was in violation of the Defendant's rights under the Constitution and the Fourth and Fifth Amendments thereof and therefore incompetent, irrelevant and immaterial.

(2) That the evidence was highly prejudicial to the Defendant and the denial of Defendant's motion to strike was prejudicial error.

V.

That the Supreme Court of the Territory of Hawaii erred in holding and finding that the evidence of John Kiehm, a witness for the Territory of Hawaii, concerning the electric equipment in the home of the Defendant was competent, relevant, material and admissible and in sustaining the Circuit Court's rulings overruling the objection of the Defendant and denying the Defendant's motion to strike the testimony, upon the ground that the same was based upon information procured during an invalid search and therefore tended to incriminate the Defendant under the Fifth Amendment and which evidence was obtained in violation of the Defendant's rights under the Fourth and Fifth Amendments to the Constitution of the United States. [83]

At the trial in the Circuit Court the witness upon being sworn testified that he was a resident of Wahiawa and an automobile mechanic; that the Defendant came to his garage and asked if he could

install some device on the door so that when a person opened it such person would receive an electric shock; that he told her he could and later purchased a transformer and installed it; that there was one wire leading to the front door and one to the back, the main wire led to a switch on the door panel; that he did not recall if he installed the switch but did connect the wires thereto; that the main wire was connected to the fuse plug and the fuse plug was connected to the ordinary wire; that the transformer was located above the living room door, one wire running to the front door, one to the back and one to the ground located outside the house; that he had a conversation with the Defendant after the apparatus was put in concerning the wiring and how to operate it; that he was an auto electrician and studied electricity.

The witness then proceeded to draw the floor plan of the home of the Defendant locating thereon the front door, the stairway, the electric switch, the transformer, the fuse plug, the manner in which the wires were connected to the front and back doors, the wires to the ground and also drew a large diagram showing the entire circuit marking thereon the fuse plug, transformer, switch and connections to the switch; and then described the switch as a knife type switch, double throw, with two wires leading to the transformer and then again drew a diagram representing the approximate size of the transformer, at which time the Defendant objected as follows: [84]

Mr. Dwight: May it please the Court, may I renew my objection? The further objection, that this witness is to reproduce evidence by an actual drawing of what this Court has suppressed. I object as incompetent, irrelevant and immaterial.

The Court: The objection will be overruled. There is no showing but what this was entirely independent of any illegal search and seizure.

Mr. Dwight: Exception.

The Court: Exception noted."

(Tr. of Ev. p. 146)

Thereupon the witness testified as to the dimensions of the transformer; that it was about four and one-half inches wide by six inches long and about three inches thick; that the line running from the transformer to the ground outside was marked on the plan, which wire was connected to a pipe; that the wire leading to the front door was soldered onto the front screen and approached the screen from the right upper corner inside the house about an inch above the hinge.

On cross-examination the witness testified that he made a statement to the police after the police officer was killed and that he signed a statement at the police station; that it was the first statement that he made concerning the case; that at the time the statement was made the police exhibited to him certain electrical equipment which consisted

of a transformer, some wires and a switch and that they were the same articles that he put into the house of the Defendant. (Tr. of Ev. p. 151)

The witness further testified that in 1936 the Defendant drove up to the shop and asked him if he could install [85] some kind of a device on the front door to keep away soldiers because they came at all hours of the night and pounded on the door; that he told the defendant he could and further told the Defendant that a transformer would give a shock; that the Defendant asked him if he would guarantee that it would not kill and that he told the Defendant that the shock was not strong enough to harm a person and that the Defendant then asked him to install the apparatus. (Tr. of Ev. p. 152).

On redirect examination, the witness testified that all of his evidence theretofore given was from his memory of what happened and what he had put in the house and on recross examination he testified that the police showed him the equipment and asked him what he knew about that equipment and then the witness began to tell his story. Whereupon the Defendant moved to strike the testimony as follows:

“Mr. Dwight: At this time I move to strike the testimony of this witness upon the ground that it is incompetent, irrelevant and immaterial; that it is based upon information procured during an invalid search and that this testimony tends to incriminate the defendant under the Fifth Amendment and was obtained

in violation of the defendant's rights under the Fourth Amendment and also the further ground that the testimony was procured in violation of law."

(Tr. of Ev. p. 155)

In a formal decision the Court denied the motion. (Tr. of Ev. pp. 163-166)

"Mr. Dwight: May I save an exception to the Court's rule?

The Court: Exception saved and noted. [86]

Mr. Dwight: On the grounds stated and I renew my objections all the way through including this witness your Honor on the same ground."

(Tr. of Ev. p. 166)

That the Supreme Court of the Territory of Hawaii erred in sustaining the rulings of the Circuit Court overruling the objection of the Defendant and denying the defendant's motion to strike for the following reasons:

(1) That the evidence was obtained from an illegal source, to-wit, an illegal search and seizure and the admission thereof was in violation of the Defendant's rights under the Constitution and the Fourth and Fifth Amendments thereof and therefore incompetent, irrelevant and immaterial.

(2) That the overruling of the objection of the Defendant and denial of the Defendant's motion to strike was prejudicial error.

VI.

That the Supreme Court of the Territory of Hawaii erred in holding and finding that the evidence of Billie Florence Penland, a witness for the Territory of Hawaii, to the effect that the Defendant told her that she pulled the switch, was competent and admissible and in sustaining the ruling of the Circuit Court in denying Defendant's motion to strike the testimony of the witness, which motion was based upon the ground that the evidence was produced and obtained in violation of Defendant's rights under the Fourth and Fifth Amendments to the Constitution.

In the Circuit Court the witness, Billie Florence Penland, upon being duly sworn, testified that she was acquainted with the Defendant and lived with her on August 3, 1937, on which day there was a raid; that officer Burns was there; that they went to the reception room; that the officer blew a whistle and some one banged on the door; that the defendant came to the door; that she saw the defendant again on the front porch when there was a struggle with the officer; that she ran upstairs and later saw the defendant upstairs when the defendant told her to go into the closet and stay there, and that the defendant told her she turned the switch.

On cross-examination the witness testified that while she was held at the police station, the police showed her some wire, equipment, and a transformer and then they began to pump her, and that she did not make any statement to the police until

the wires, transformer and door was shown to her and then they compelled her to tell what she knew about the door.

On redirect examination the witness stated that all she testified to was based upon her memory of what happened on the night of August 3rd, 1937.

Upon completion of the testimony the Defendant moved to strike as follows:

“Mr. Dwight: At this time I move to strike the testimony of this witness upon the ground that it is incompetent, irrelevant and immaterial. The evidence was produced and obtained in violation of defendant’s rights under the Fourth and Fifth Amendments of the Constitution. * * *”

(Tr. of Ev. p. 316)

The trial Court denied the motion and the exception was duly noted, as follows:

“The Court: The motion is denied.” [88]

(Tr. of Ev. p. 316)

“Mr. Dwight: Save an exception.

The Court: Exception granted.”

(Tr. of Ev. p. 317)

That the Supreme Court of the Territory of Hawaii erred in sustaining the ruling of the Circuit Court, denying the Defendant’s motion to strike for the following reasons:

(1) That the evidence was obtained and adduced as a result of an illegal search and seizure, and

in violation of the Defendant's rights under the Constitution of the United States and the Fourth and Fifth Amendments thereto, and was therefore incompetent and inadmissible.

(2) That the evidence was highly prejudicial to the Defendant and the denial of the Defendant's motion to strike was prejudicial error.

VII.

That the Supreme Court of the Territory of Hawaii erred in sustaining the Circuit Court's action in instructing the jury over the objection and exception of Defendant, as requested by the Territory of Hawaii, in Territory of Hawaii's requested instruction No. 12, as follows:

“The Court: You are instructed that Section 5404 of the Revised Laws of Hawaii 1935 provides as follows:

‘Policemen, or other officers of justice, in any seaport or town, even in cases where it is not certain that an offense has been committed, may, without warrant, arrest and detain for examination such persons as may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit an offense.’

You are hereby instructed that the term ‘reasonable suspicion’ as used in said statute is construed by the [89] Court to mean probable cause.

You should consider this law together with all the evidence in the case in determining whether or not the deceased, Wah Choon Lee, was lawfully upon the premises of the defendant at the time in question.”

To the giving of the instruction above set out, the Defendant objected, and stated her reasons therefor orally in the Judge's Chambers in the presence of the Assistant Public Prosecutor, to-wit, that Section 5404 of the Revised Laws of Hawaii 1935, incorporated in said instruction is unconstitutional and void in that under said section and instruction arrests without warrant may be made in either felony or misdemeanor upon probable cause irrespective of whether the crime was committed in the presence of the arresting officer or not; that under said section an arrest without warrant for an offense not committed in the presence of the arresting officer could be made in the case of a misdemeanor; that if any crime had been committed at the time of the entry of the officers in the home of Defendant it was a misdemeanor, and that therefore the said instruction contravened the Fourth Amendment to the Constitution of the United States; that said instruction permitted the jury to determine from all the evidence in the case, instead of only such facts as were cognizable by the officers at the time of entry, in determining whether a crime had been committed in their presence, and that the instruction was prejudicial to the rights of the defendant. At the conclusion of the charge of

the Circuit Court, in the presence of the jury, before the jury retired, the Defendant duly excepted.

That the Supreme Court of the Territory of Hawaii [90] erred in sustaining the Circuit Court's action in giving to the jury the above instruction over the objections of the Defendant for the following reasons:

(1) That said instruction is not the law; that Section 5404 of the Revised Laws of Hawaii 1935, is null and void, in that it contravenes Article Four of the Amendments to the Constitution of the United States, in that under said section, arrests without warrant in misdemeanors may be made upon probable cause, whereas under the Constitution arrests may only be made in the case of misdemeanors where the offense is committed in the presence of the arresting officer.

(2) That said instruction was highly prejudicial to Defendant in that it permitted the jury to determine the legality of the arrest from all of the evidence and not from such facts as were cognizable only by the arresting officer.

(3) That said instruction was erroneous and the giving of which constituted reversible error.

VIII.

That the Supreme Court of the Territory of Hawaii erred in sustaining the Circuit Court's action in instructing the jury over the objection and exception of Defendant, as requested by the Territory

of Hawaii, in Territory of Hawaii's requested instruction No. 12A, as follows:

“You are instructed that if you believe from all the evidence and beyond a reasonable doubt that the deceased was acting as a police officer and that he went upon the premises of the defendant for the purpose of assisting another police officer, and that the deceased in so doing acted under such circumstances as would justify a reasonable suspicion based upon probable cause that some person or persons upon the premises had committed or intended to commit an offense against the laws of the Terri- [91] tory of Hawaii, then you must find under such circumstances that the deceased, Wah Choon Lee, had a lawful right there and it was his duty to enter upon the premises of the defendant and you must not under such circumstances consider the deceased as a trespasser.”

To the giving of the instruction above set out, the Defendant objected, and stated her reasons therefor orally in the Judge's Chambers in the presence of the Assistant Public Prosecutor, to-wit: That said instruction was erroneous in law; that it contravened the Fourth Amendment to the Constitution of the United States in that under said instruction an arrest without warrant in the case of a misdemeanor could be made upon probable cause even though the offense was not committed in the presence of the arresting officer and that said instruc-

tion was prejudicial to the Defendant, and at the conclusion of the charge of the Court, in the presence of the jury, before the jury retired, the Defendant duly excepted.

That the Supreme Court of the Territory of Hawaii erred in sustaining the Circuit Court's action in giving to the jury the above instruction over the objection of the Defendant, for the following reasons:

(1) That said instruction is not the law, that the instruction permits arrests to be made in misdemeanors, without warrant and without the presence of the arresting officer and therefore conflicts with Article IV of the Amendments to the Constitution of the United States.

(2) That said instruction was highly prejudicial to defendant in that it permitted the jury to determine the right to make an arrest upon all the evidence in the case and not only upon such facts as may have been known to the arresting officer.

[92]

IX

That the Supreme Court of the Territory of Hawaii erred in sustaining the Circuit Court's action in instructing the jury over the objection and exception of Defendant, as requested by the Territory of Hawaii, in Territory of Hawaii's requested instruction No. 14, as follows:

“You are instructed that if you believe from all the evidence and beyond a reasonable doubt

that the deceased was acting as a police officer and that he went upon the premises of the defendant for the purpose of arresting and detaining for examination such persons as he might have found thereon, and that the deceased in so doing acted under such circumstances as would justify a reasonable suspicion based upon probable cause that some person or persons upon the premises had committed or intended to commit an offense against the laws of the Territory of Hawaii, then you must find under such circumstances that the deceased, Wah Coon Lee, had a lawful right there and it was his duty to enter upon the premises of the defendant and you must not under such circumstances consider the deceased as a trespasser.

And in this connection you are further instructed that the fact as to whether or not there was a 'no trespassing' sign upon the premises at the time, would not alter the right of the deceased, Wah Choon Lee, or the other police officers with him, to be upon the premises in question."

To the giving of the instruction above set out, the defendant objected, and stated her reasons therefor orally in the Judge's Chambers, in the presence of the Assistant Public Prosecutor, to-wit: that said instruction was erroneous in law; that it contravened the Fourth Amendment to the Consti-

tution of the United States, in that under said Instruction an arrest without warrant in the case of a misdemeanor could be made upon probable cause, even though the offense was not [93] committed in the presence of the arresting officer and that said instruction was prejudicial to the Defendant; and at the conclusion of the charge of the Court, in the presence of the jury, before the jury retired, the Defendant duly excepted.

That the Supreme Court of the Territory of Hawaii erred in sustaining the Circuit Court's action in giving to the jury the above instruction, for the following reasons:

(1) That said instruction is not the law, that the instruction permits arrests to be made in misdemeanors without warrant and without the presence of the arresting officer and therefore conflicts with the Fourth Amendment to the Constitution of the United States.

(2) That said instruction was highly prejudicial to Defendant in that it permitted the jury to determine the right to make an arrest upon all the evidence in the case and not upon such facts as may have been known to the arresting officer.

X.

That the Supreme Court of the Territory of Hawaii erred in sustaining the Circuit Court's refusal to give to the jury defendant's requested instruction No. 16, upon the subject of arrests, as follows:

“You are instructed that a police officer may arrest without a warrant one guilty of a misdemeanor only if the misdemeanor is committed in the officer’s presence.”

The Territory of Hawaii objected to the giving of said instruction upon the ground that it conflicted with Section 5404 of the Revised Laws of Hawaii 1935, set forth in [94] Territory’s requested instruction No. 12.

That the Supreme Court of the Territory of Hawaii erred in sustaining the Circuit Court’s refusal to give said instruction for the following reasons:

(1) That said instruction properly states the law of arrests and is consistent with the Constitution of the United States, and that Section 5404 of the Revised Laws of Hawaii is unconstitutional and void.

(2) That the refusal to give said instruction was highly prejudicial to Defendant in that the jury was not properly instructed upon the vital subject of arrests.

XI.

That the Supreme Court of the Territory of Hawaii erred in sustaining the Circuit Court’s refusal to give to the jury Defendant’s requested instruction No. 18, upon the subject of arrests, as follows:

“You are instructed that to justify an arrest for a misdemeanor without warrant it must have been committed in the officer’s presence, and it is so committed, where he can by the

exercise of his own senses detect it; but mere suspicion is not enough.”

The Territory of Hawaii objected to the giving of said instruction upon the ground that it conflicted with Section 5404 of the Revised Laws of Hawaii 1935, set forth in Territory’s requested instruction No. 12.

That the Supreme Court of the Territory of Hawaii erred in sustaining the Circuit Court’s refusal to give said instruction for the following reasons:

(1) That said instruction properly states the law of arrests and is consistent with the Constitution of the [95] United States and that Section 5404 of the Revised Laws of Hawaii, 1935, is unconstitutional and void.

(2) That the refusal to give said instruction was highly prejudicial to Defendant in that the jury was not properly instructed upon the vital subject of arrests.

That as to Assignment of Errors Nos. VII to XI inclusive, the Defendant at the conclusion of the charge of the Court, in the presence of the jury, before the jury retired, excepted to the Circuit Court’s ruling as follows:

“Mr. Dwight: May it please the Court at this time may I except to the granting by the Court of all of the prosecutions requested instructions upon my general objection?”

The Court: You may.

Mr. Dwight: To the granting of Prosecution's Requested Instructions Nos. 3, 4, 5, 12, 12A, 13, 14 and 17 over objection, and the refusal of the Court to give Defendant's Requested Instructions numbered 1, 2, 3, 4, 8, 10, 13, 16, 18, 28, 30, 31, 32 and 37.

The Court: Exception will be noted. The objections are already in the record."

(Tr. of Ev. pp. 564-565.)

XII.

That the Supreme Court of the Territory of Hawaii erred in sustaining the Circuit Court's action in accepting the verdict of guilty of manslaughter, leniency recommended, for the reason that the said verdict is contrary to the law, evidence and weight of the evidence, to which ruling the Defendant duly excepted, in the presence of the jury and before [96] it was dismissed as follows:

"Mr. Dwight: At this time, may it please the Court, may I except upon the ground it is contrary to law, the evidence, the weight of the evidence, and hereby give notice of a motion for a new trial."

(Tr. of Ev. p. 593.)

XIII.

That the Supreme Court of the Territory of Hawaii erred in sustaining the Judgment and Sentence of the Circuit Court upon the verdict for the reason that the same is contrary to law, upon the

imposition of which sentence the Defendant excepted as follows:

“Mr. Dwight: May the defendant save an exception to the sentence upon the ground it is contrary to law * * *”

(Tr. of Ev. p. 597.)

The aforesaid Assignments of Error Nos. I to XIII inclusive above set forth are filed and based upon all the pleadings and exhibits in the above entitled cause, upon all the clerk's minutes, the verdict, judgment, sentence, upon the official reporter's transcript of the testimony, upon all of the proceedings, records and files, which are hereby all referred to and incorporated herein, and made a part of these Assignments of Errors, as if fully set out herein, for the purpose of this appeal.

Wherefore, the Defendant, Appellant herein, Ilene Warren, alias “Speed” Warren, prays that judgment in said cause be reversed and the cause remanded, with instructions to the trial Court to discharge the Defendant and/or with [97] instructions concerning further proceedings therein, and for such other and further relief as may be just in the premises.

Dated at Honolulu, Hawaii, this 20 day of February, A. D 1940.

ILENE WARREN alias
“SPEED” WARREN,
Defendant-Appellant,
By CHARLES B. DWIGHT,
Her Attorney. [98]

Receipt of a copy of the within acknowledged this 20th day of February, 1940.

KENNETH E. YOUNG,
Attorney for Territory of Hawaii.

[Endorsed]: Filed Feb. 21, 1940. Gus K. Sproat,
Deputy Clerk, Supreme Court. [75]

[Title of Supreme Court and Cause.]

CITATION ON APPEAL

The United States of America—ss.

The President of the United States of America
to:

The Territory of Hawaii and to Charles E. Cassidy, Public Prosecutor of the City and County of Honolulu, its Attorney:

You are hereby cited and admonished to be and appear at the Ninth Circuit, to be held at the City and County of San Francisco, State of California, within thirty (30) days from the date of this writ, pursuant to an order allowing appeal, filed in the office of the Clerk of the Supreme Court of the Territory of Hawaii, wherein Ilene Warren alias "Speed" Warren, is the Defendant and you are the Plaintiff, to show cause, if any there be, why the judgment in such appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf. [100]

Witness, the Honorable Charles E. Hughes, Chief Justice of the Supreme Court of the United States

of America, this 21st day of February, A. D. 1940,
and of the Independence of the United States 164th.

[Seal]

JAMES L. COKE,
Chief Justice.

Attest:

GUS K. SPROAT,
Deputy Clerk of the Supreme
Court of the Territory of
Hawaii.

Received a copy of the within citation February
21, 1940.

TERRITORY OF HAWAII,
By KENNETH E. YOUNG.

Let the within Citation issue.

JAMES L. COKE,
Chief Justice. [101]

Receipt of a copy of the within acknowledged this
21 day of Feb., 1940.

KENNETH E. YOUNG,
Attorney for Territory of Hawaii.

[Endorsed]: Filed Feb. 21, 1940. Gus K. Sproat,
Deputy Clerk, Supreme Court. [99]

[Title of Supreme Court and Cause.]

CLERK'S CERTIFICATE

I, Gus K. Sproat, Deputy Clerk of the Supreme
Court of the Territory of Hawaii, by virtue of the
petition for appeal filed in the above entitled cause,
being pages 69 to 71, both inclusive, and in pursu-

ance of the praecipe for transcript of record, being pages 107 to 109, both inclusive, do hereby transmit to the United States Circuit Court of Appeals for the Ninth Circuit the foregoing transcript of record on appeal composed of pages 1 to 113, both inclusive, and the transcript of proceedings had and testimony given, Volume 1, Parts 1 and 11, Numbered 868, and filed January 14, 1938.

I do hereby certify that pages 1 to 68, both inclusive, and pages 102 to 106, being indictment for murder in the second degree, verdict, clerk's minutes of the Circuit Court, First Judicial Circuit, opinion of the Supreme Court, judgment of the Supreme Court, petition for rehearing, decision on petition for rehearing, application for recall of mandate, order of the Supreme Court, recalling mandate, cost bond, and the transcript of proceedings had and testimony given Volume 1, Parts 1 and 11, No. 868, filed January 14, 1938, are full, true and correct copies of the originals on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii. [114]

I do certify further that pages 69 to 101, both inclusive, and pages 107 to 113, both inclusive, being petition for appeal, notice of appeal, and order allowing appeal, assignment of errors, citation on appeal, praecipe for transcript of record, and orders enlarging time to file record on appeal, are the originals filed in the Supreme Court of the Territory of Hawaii.

I do certify also that the cost of the foregoing transcript of record on appeal is \$25.00, and the said amount has been paid by Charles B. Dwight, Esq., attorney for the appellant.

In witness whereof, I have hereunto set my hand and affixed the Seal of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, Territory of Hawaii, this 18th day of April, A. D. 1940.

[Seal]

GUS K. SPROAT,
Deputy Clerk of the Supreme
Court of the Territory of
Hawaii. [115]

Circuit Court, First Judicial Circuit
First Division

Territory of Hawaii

January Term, A. D. 1938

Indictment

C-14332

Murder, Second Degree

THE TERRITORY OF HAWAII,

Plaintiff,

vs.

ILENE WARREN alias "SPEED" WARREN,
Defendant.

Honolulu, T. H., Wednesday, Feb. 2, 1938.

Before Hon. Louis Le Baron, First Judge, and a
jury.

Mr. H. A. Wilder, Clerk

Mrs. Olga Sezenevsky, Clerk

Mr. George R. Clark, Reporter

Appearances:

Hon. Charles E. Cassidy, Public Prosecutor, by
Kenneth E. Young, Esq., Assistant Public
Prosecutor, for the Territory.

Mr. Charles B. Dwight, for the defendant.

(TESTIMONY)

TRIAL BY JURY

(At the hour of nine o'clock a. m., all parties to
this cause being present, the defendant being pres-

ent and represented by counsel, and all the jurors on the panel upon roll call by the clerk being present, the impanelling of a jury was commenced, proceeded with and at the hour of 11:15 o'clock a. m. the present panel was exhausted [1*] upon the Territory exercising its seventh peremptory challenge. Thereupon the Court excused the remaining jurors in the jury-box until nine o'clock a. m., February 3, 1938.)

Mr. Young: If your Honor please, before this panel is drawn, the Territory asks the Court to order certain witnesses to be back tomorrow morning without further subpoena.

Mr. Dwight: Call the witnesses inside.

Mr. Young: (Upon two women and one man entering the court-room door) Lou Rodgers, John Kiehm and Lucy McGuire.

The Court: (To aforesaid persons) You three witnesses, who have been subpoenaed in this case, Territory vs. Ilene Warren, are notified the case is continued until tomorrow morning at nine o'clock. Be back here without fail. (To the Clerk) Proceed to draw a special panel of twenty-six names.

(Thereupon the clerk drew twenty-six names, as ordered). Those names will be placed upon a special venire returnable tomorrow morning at 8:45 a. m.

(At 11:30 o'clock a. m. a recess was taken until Thursday, February 3, 1938, at nine o'clock a. m.)

[2]

*Page numbering appearing at foot of page of original certified Transcript of Record.

Honolulu, T. H., Thursday,
February 3, 1938.

FURTHER TRIAL BY JURY

(At the hour of nine o'clock a. m. the trial by jury was resumed.)

The Clerk (Mr. Wilder). Criminal 14332 Territory of Hawaii vs. Ilene Warren alias "Speed" Warren, for further trial.

Mr. Dwight: At this time may I be permitted to make a motion in chambers instead of asking to have the jury excused?

The Court: All right, Court will take a short recess to hear the motion in chambers.

(A brief recess was taken.)

In Chambers.

Mr. Dwight: At this time, in view of the recent developments, I move that the Court order the immediate return of all property ordered suppressed. The police have been using that equipment, taking the transformer to several radio stations to locate one of a similar nature. The attempt by the government to use evidence that had been suppressed for the purpose of gathering other evidence and proving indirectly what they cannot prove directly would compel the defendant to be a witness against herself. I would like the Court to make an order for the immediate return to the defendant of all the property ordered suppressed.

The Court: Isn't that motion superfluous?

Mr. Dwight: You have made an order. [3]

Mr. Young: I don't know anything about that. The order is in effect. I haven't used it myself since the order.

Mr. Dwight: I have been reliably informed by the operator of a radio station that this happened.

Mr. Young: I don't know anything about that. All I know is that the evidence is in the Police Department. I don't care what they do with it. It is none of my concern.

Mr. Dwight: I think an order for the immediate return is in order.

The Court: My impression is the order calls for the immediate return.

Mr. Young: I know it is not coming from the Prosecutor's Office but it is coming from the Police Department. I can assure you that nothing connected with that house is being used. As an officer of this Court I feel it my duty to keep as much out as the order calls for.

The Court: The Court will make an additional order granting that motion to clarify the order already entered to suppress, that the evidence seized by this illegal search be returned forthwith to the defendant.

Mr. Dwight: May I suggest by stipulation, "Or such person as the defendant may designate in writing", so that we may have someone go and get it?

The Court: To the defendant or such person as the defendant may designate in writing and to re-

turn [4] it forthwith immediately. Do you wish to have a little time to have that delivered?

Mr. Dwight: I think I can write the letter and have her sign it. (Thereupon Mr. Dwight types the letter and has the defendant sign the same)

(At 9:15 o'clock a. m. the Court reconvened and the Clerk (Mr. Wilder) called the roll of jurors in the jury-box and found eleven present. He also read the return of the deputy sheriff to the special venire issued out of this court on February 2nd and called the roll of those served, who were found to be all present with the exception of three excused and those unserved. Thereupon these jurors were duly sworn by the clerk and examined by the Court as to their qualifications and disqualifications to sit as trial jurors for the January 1938 term of Court and found to be qualified. The remaining trial jurors on the new panel were sworn as to their qualifications to sit in the instant case and the impanelling of a jury to try the case was resumed, proceeded with and completed.)

Mr. Dwight: The jury is satisfactory.

Mr. Young: The jury is satisfactory to the Territory.

The Court: Let the record so show. Swear the jury.

(At 10:05 o'clock a. m. the jury was duly impanelled, accepted and sworn.)

Mr. Young: May we have a short recess at this time, your Honor? [5]

The Court: The rest of the jury panel will be excused for this case. Until further order of the Court, you are excused. The Court stands in recess.

(At 10:05 o'clock a.m. a brief recess was taken and at 10:20 o'clock a.m. the Court reconvened.)

Mr. Dwight: May it please the Court, at this time may I ask the prosecution to elect upon what count of the indictment they intend to proceed?

Mr. Young: Our Supreme Court has held, your Honor, in a case like this it is not necessary.

Mr. Dwight: Our Supreme Court does not so state. The statute says:

(Reading Sec. 5502, RLH 1935) "In an indictment for an offense which is constituted of one or more of several acts or which may be committed by one or more of several means or with one or more of several intents or which may produce one or more of several results, two or more of those acts, means, intents or results may be charged in the alternative."

The Court: What section is that?

Mr. Dwight: That is all that our statute says. This indictment sets forth murder in the second degree and various and divers means. Both of the grounds conflict and the defenses conflict.

Mr. Young: I think the case in 11 Hawaii 341 will settle that.

Mr. Dwight: The statute was only passed last year for that very purpose.

The Court: What is here in Sec. 5502?

Mr. Dwight: Section 5502 deals solely with the indictment. Prior to that time you could demur to [6] the indictment because it is duplicitous. This section simply allows and the defense is entitled to know upon which count they intend to proceed. If the Court will examine the counts, the Court will see a difference between the three counts, where the defenses will be entirely different.

The Court: I see. You resist this motion?

Mr. Young: That case in 11 Hawaii covers it. The case in 11 Hawaii is squarely in point.

The Court: Are you familiar with 11 Hawaii?

Mr. Dwight: In 1915 the statute was passed to cover that defect in an indictment. There is no question we are entitled to an election. We must, before we put on our defense, compel the prosecution to elect. I am asking them to elect now.

Mr. Young: I submit it to the Court.

The Court: The Court will reserve its decision on that.

Mr. Dwight: Very well.

Mr. Young: Any further motions?

Mr. Dwight: If your Honor please, I move that all witnesses in this case be excluded from the hearing of this court-room.

The Court: No objection to that motion, the motion will be granted. All witnesses and prospective witnesses will be excluded from this court-room

and from the hearing of this court-room until further order of the Court. Until further order of the Court all witnesses will remain outside the court-room and that rule will be observed throughout [7] the trial of this case. You may proceed, Mr. Young.

PLAINTIFF'S OPENING STATEMENT TO THE JURY

Mr. Young: If the Court please, and gentlemen of the Jury, I know it is the first experience of some of you on a criminal trial jury. I believe before a juror can perform his duty he should know something about the procedure. This is what is called an opening statement by the prosecution and in it we give you a statement of what we expect to prove in the case. Anything we may say is not to be used as evidence against this defendant or for the Territory. It is merely a bird's-eye view of how the prosecution sees this case so that you may follow the evidence as it comes in step by step. Of course, we cannot put on all the evidence at the same time. It is for that reason, so that you may know about what to expect in the line of testimony. After the opening statement the Territory will then put on its evidence. Counsel for the defense may make his opening statement after I make mine or he may reserve it.

Mr. Dwight: Counsel is supposed to make his opening statement. He has a right to set forth

only the case of the prosecution. I except to counsel giving the jury a lecture.

The Court: Objection will be overruled.

Mr. Dwight: Exception.

(Mr. Young continued his opening statement to the jury on behalf of the plaintiff, in the course [8] of which he said:)

After the evidence is put on for the Territory, then the defense may make their opening statement, as they see fit. At that time the defense will put that on.

Mr. Dwight: I object to this. I except to counsel's remark.

Mr. Young: I suggest the jury should know this.

The Court: Proceed.

Mr. Dwight: May I save an exception?

(Mr. Young continued his opening statement to the jury on behalf of the plaintiff, in the course of which he said:)

After the evidence is all in, gentlemen of the jury, you will hear the argument of the prosecution. We have the first argument because we have the burden of proof. After that the defendant will argue. After you have heard all the evidence and all the argument in the case, you will then be instructed as to the law in this case, so you must wait until you have heard everything before you know what the law is in the case.

Mr. Dwight: I submit counsel's opening statement is entirely out of place.

The Court: That is just preliminary and instructive for the jurors.

Mr. Dwight: May I save an exception?

(Mr. Young continued his opening statement to the jury on behalf of the plaintiff, in the course [9] of which he said:)

I am going to read you, gentlemen of the jury, the indictment returned by the grand jury in this case, reading from the original indictment.

(The indictment was read in its entirety)

To this indictment, gentlemen of the jury, defendant has entered her plea of not guilty. Her plea put in issue each and every material allegation of that indictment. Out of fairness to this defendant I tell you that that indictment is not evidence against her and should not be considered as evidence against her. It is merely a formal charge against this defendant. The Territory, gentlemen, will prove to you beyond a reasonable doubt each and every material allegation as set forth in that indictment. I am going to make a statement at this time of the facts briefly as we are going to offer them to you in evidence. I am not going to make a lengthy statement of the facts that we expect to prove because I feel that the witnesses in this case can give you a better story of what happened than I can. As I stated before, that is the only reason I am giving you a statement. We are going to prove, gentlemen of the jury, that on August 3, 1937, the defendant, Ilene "Speed" Warren, was operating a

house of prostitution at Wahiawa in the City and County of Honolulu. On that date seven police officers met at the Wahiawa court house. One of those officers was dressed in civilian clothes. He went to the house of Ilene "Speed" [10] Warren, as any man would in civilian clothes, knocked at the door, asked for a woman and they allowed him entrance into the place. After he was in there he found one of the occupants—girls in there, one by the name of Billie Penland just about to commit an act of prostitution. By a pre-arranged signal he blew a whistle. Two officers were stationed on the back of the house, not on the lot of "Speed" Warren but on an empty lot, and the other four officers were stationed out on the front street, not on the property of "Speed". About nine o'clock they heard the shrill blast of a police whistle. They came onto the premises, four police officers,—Caminos, another officer by the name of Kam Yuen. The four of them approached the house, the front door of the house, made known to the occupants therein that they were police officers. The door refused to open as though a fight or something was going on inside. They attempted to knock down the door, then Caminos discovered the door did not open in but that it opened out. There was nothing on the door, no handle, no knob. They attempted to pull the door by reaching up and grabbing a metal sheet. Wah Choon Lee, the deceased, grabbed that piece of metal.

Mr. Dwight: At this time, may it please the Court, I except to counsel's remarks as offering to prove something which this Court has suppressed, offering to prove evidence that has been suppressed by this Court. [11]

Mr. Young: Counsel has not stated anything that has been suppressed by the Court.

Mr. Dwight: He made a statement about a plate.

The Court: The objection will be overruled.

Mr. Dwight: May I save an exception?

(Mr. Young continued his opening statement to the jury on behalf of the plaintiff, in the course of which he said:)

That it was raining at the time; that he made a perfect ground so far as that metal (iron) and the grasping of the door is concerned; that he received at that time a deadly charge of electricity and he was killed almost instantaneously and never regained consciousness. He was taken fifteen minutes later to the Army hospital at Schofield, where he was pronounced dead, never regaining consciousness. We will prove by experts that the conditions under which this happened made this door a dangerous thing to human life.

Mr. Dwight: Can my objection and exception go to counsel's remarks and exceptions to the Court's ruling?

The Court: Exception may be noted.

Mr. Dwight: On the further ground it is made simply to prejudice the jury against the defendant.

The Court: Let the record so show.

(Mr. Young continued and completed his opening statement on behalf of the plaintiff to the [12] jury, as follows:)

We will further prove that while this was taking place on the outside the defendant was the owner and occupant of these premises; that she was operating a house of prostitution; that at that time there were two prostitutes in that house plying their unlawful trade; that the defendant did throw the switch that gave this deadly charge; that she did it maliciously. In order to prove the identity of the defendant, in order to prove the background of this affair, we are going to show you by evidence that about two years previous to this time her place was raided; the defendant's place was raided by the police; she was placed under arrest; that she objected to this manner of treatment and she thought that she would stop it if it ever happened again and hired a man to put in that deadly equipment for the purpose of keeping drunk soldiers away, who frequented her place, and for the second reason for keeping police officers away. We will prove that by other prostitutes. We will prove that this all happened here in the City and County of Honolulu. Gentlemen, when we have finished our proof, the Territory is going to ask you for a verdict of guilty of murder in the second degree.

Mr. Dwight: May I reserve my opening statement?

The Court: Mr. Dwight may reserve his opening statement until the termination of the prosecution's case. Proceed now with the evidence of the prosecution.

[13]

WITNESSES FOR THE PLAINTIFF

WILLIAM ERNEST BELL,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. William Ernest Bell.

Q. What is your occupation?

A. Draftsman for the Planning Commission of the City and County.

Mr. Young: Just face towards the jury, Mr. Bell, so they can hear everything you say and speak up a little louder.

Q. How long have you been a draftsman for the City and County of Honolulu?

A. For the last four years.

Q. What are your educational qualifications to act as a draftsman?

A. It runs in the same line as engineering. I am supposed to know drafting. I took a post graduate from Stanford and am a high school graduate.

Q. Approximately how long have you been acting in your capacity?

(Testimony of William Ernest Bell.)

Mr. Dwight: Oh, I will admit the witness' qualifications.

Q. Now, Mr. Bell, did you have occasion at my request to go out to Wahiawa and take measurements of certain streets out there and locate certain houses that you found on those streets?

A. Yes, sir. [14]

Q. Did you do that? A. Yes, sir.

Q. When was that? A. Monday.

Q. Did you make a plan at my request?

A. Yes.

Q. Did you draw that to scale?

A. Yes, sir.

Q. What was the scale that you drew that to?

A. One to twenty.

Q. Will you just tell us what streets you surveyed?

A. It was off California, Olive Street, Avacoda, two Hawaiian names,—I can't remember exactly how you pronounce them—Neal Street and the railroad.

Q. You later prepared a draft of that?

A. Yes.

Q. I am going to show you a plan here (produces a paper). Just take one end. Will you tell the Court whether or not this is the plan that you drew?

A. (Examining the same) Yes, that is the plan.

Mr. Dwight: This was drawn about——

(Testimony of William Ernest Bell.)

A. One inch to twenty feet.

By Mr. Young:

Q. This is a true and correct plan of what you saw and measured out there? A. Yes.

Q. Can you locate some of these?

A. This is the court house (indicating); California off Kamehameha (indicating); First National Bank, Japanese School (indicating). Those other houses I took them off the tax maps, not exactly the outside outline [15] but just to show more or less where the houses are situated. It indicates the houses are on certain lots.

Q. And each lot you have a building on, there is a building? A. Yes.

Q. This is the railroad down there (indicating)?

A. Yes.

Q. Your legend there indicates just exactly what it means here?

A. A round circle means electric light poles just about in that direction.

Q. "X" means "railroad crossing"?

A. "X" means "railroad crossing."

Q. Spots of green? A. Hedging.

Q. You found those on the premises?

A. Yes, I found those on the premises. I drew those to scale.

Cross Examination

By Mr. Dwight:

Q. You say that the houses are not properly located?

(Testimony of William Ernest Bell.)

A. They are properly located. As far as the outline of the house are, there may be a little change.

Q. I see some names here (indicating on map).

A. I took them from the tax office. I have the right house in the right location.

Q. There is a dwelling (indicating on map). I draw your attention to this lot that seems to have more pegs on it than any other, the one with the hedge and the sisal plant, I notice. Did you check to see who owned [16] that property?

Mr. Young: The owner is Marvin Connell. That is the present registration at the tax office; they are the responsible owners.

A. Transferred from the first name above.

Q. That transfer was about four years ago?

A. I couldn't say; I don't know how often the transfers were made.

Q. Do you know that the tax office indicates the name Marvin Connell was the owner of the property with the date? A. Yes.

Mr. Dwight: I am going to object. It is incompetent, irrelevant and immaterial. I don't see what bearing this map will have on the issues. My general objection is it is incompetent, irrelevant and immaterial. There is no connection here whatever with the defendant. Somebody else owns the property.

The Court: The Court will admit this map in evidence as Exhibit A for the Prosecution, subject

(Testimony of William Ernest Bell.)

to a motion to strike, if it is not connected up with this defendant in a material, relevant and competent way.

Mr. Young: Q. Mr. Bell, I understand you got this name from the tax office? A. Yes.

The Court: Subject to the motion to strike later, it is introduced as Exhibit A for the Prosecution.

(The paper referred to was received in evidence and marked "Prosecution's Exhibit A.")

[17]

Mr. Young: No further questions.

Mr. Dwight: No questions.

PERRY W. PARKER,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name?

A. Perry W. Parker.

Q. What is your occupation, Mr. Parker?

A. Detective with the Honolulu Police Department.

Q. How long have you been a detective for the Honolulu Police Department?

A. About six months.

(Testimony of Perry W. Parker.)

Q. How long have you been with the Honolulu Police Department? A. About five years.

Q. About five years. What were your duties before you were a detective?

A. I was in the Patrol Division, Radio Patrol.

Q. Do you know a person by the name of Ilene Warren alias "Speed" Warren?

A. Yes, I do.

Q. Is she in court here this morning?

A. Yes.

Q. Will you indicate where she is?

A. She is sitting to the right of Mr. Dwight there (indicating).

Mr. Young: May the record show the identification?

The Court: The record may show that the [18] witness indicates the defendant.

Q. Do you know her by any other names?

Mr. Dwight: Immaterial; objected to on that ground.

Mr. Young: It is for the purpose of identification.

Mr. Dwight: She has been identified by this witness.

Mr. Young: It is very relevant. She might be going by this name on the map.

Mr. Dwight: The witness has definitely testified and he gave her name.

The Court: Objection will be sustained.

(Testimony of Perry W. Parker.)

By Mr. Young:

Q. Mr. Parker, what relations, if any, have you ever had with this woman?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial; having no bearing upon the issues, this witness' testimony. The statute of limitations will prevent any reference to that; it is too remote. Still the additional ground is they are attempting to impeach this witness and she has not yet taken the stand and she does not have to take the stand.

The Court: What is the purpose of this question?

Mr. Young: I can lead more directly to the point. Counsel objected it is leading.

Mr. Dwight: I am objecting because I know what is coming. Counsel knows what is coming [19]

Mr. Young: I will withdraw the question.

Q. Now, Mr. Parker, in your official capacity do you know where Ilene "Speed" Warren lives?

A. Yes.

Q. Where does she live?

A. On Muliwai Street at Wahiawa.

Q. On Muliwai Street at Wahiawa?

A. Yes.

Q. How many times, approximately, have you been to that place?

A. Oh, I would say I have been there at least ten times.

(Testimony of Perry W. Parker.)

Q. You have been there at least ten times. When was the first time you were there? About when, just approximately?

A. I believe the first time was on a Federal liquor raid about three years ago.

Mr. Dwight: I am going to move that testimony be stricken as incompetent, irrelevant and immaterial, as tending to prejudice this jury and upon the further ground that prosecution is attempting to impeach this witness the character of defendant before she takes the stand. If she doesn't take the stand, it is immaterial.

Mr. Young: I believe I made it clear in my opening statement it is a circumstance in this case, showing the malice, the motive, the identity and everything behind this case. We have got to have the background.

Mr. Dwight: May it please the Court, I [20] take it, that they cannot adduce it on that theory. I have stated my legal objection. To begin with, may it please the Court, this witness, this defendant, does not have to take the stand and her character is not in issue until she takes the stand and no evidence can be adduced to impeach her testimony until after she takes the stand. This is incompetent, irrelevant and immaterial in connection with this particular charge. To begin with, it is too remote.

The Court: Objection will be overruled.

Mr. Dwight: Before the Court rules, I would like to take a recess to show the Court authorities.

Mr. Young: In order to obviate any further objections along this line, I suggest your Honor dismiss the jury and I will make a full and complete offer of proof so that your Honor will know what the prosecution proposes to prove.

Mr. Dwight: Even assuming that the defendant does take the stand, this testimony is inadmissible unless she puts her character in issue.

The Court: It is eleven o'clock. The Court will take a recess. Any authorities either counsel wants to advance they can do so in chambers. Court will take a recess.

Mr. Dwight: From now until tomorrow?

The Court: Until two o'clock.

(A recess was taken until two o'clock p. m.) [21]

Afternoon Session

In Chambers

(At two o'clock p. m., court convened in chambers and both counsel present, the following proceedings were had):

The Court: The record is now open for the purpose of the offer of proof as proposed by Mr. Young in open court. This is now in the absence of the jury.

Mr. Young: The last question that was put to the witness was as to the time that he was at "Speed" Warren's, the first he had been there. We propose to offer to prove by this witness that on or about the first day of June——

The Court: What year?

Mr. Young: (Continuing) 1936, this police officer went upon the premises of "Speed" Warren, took her and one Lou Rodgers into custody and took them to the police station. That is all that we propose to prove by this witness. The reason we are offering that proof is to establish a date, a definite and known time when "Speed" Warren developed an animosity towards the Police Department. We will then connect that up with the other evidence brought in the case. Let the record show it is not offered in any way for casting any aspersions upon the character of the defendant. If the incidental effect is that, we can't help it, the identity of the defendant in this case being important because it is a circumstantial evidence case.

Mr. Dwight: I will state my objections. [22]

The Court: Just one minute, before you do that. Mr. Young, you have no objection to the Court striking out any words the witness might have used in giving his testimony of "arrest", "raid" or "prostitution", or anything of that sort?

Mr. Young: If the witness don't know that of his own knowledge, I have no objection to the Court striking that.

Mr. Dwight: Now, just a moment,—that is just exactly what I was trying to avoid and that is exactly what the Supreme Court said was highly improper practice in the Corum decision.

The Court: This is not before the Court.

Mr. Dwight: My objection to this testimony is that it is incompetent, irrelevant and immaterial.

The Court: Before you go into it, do you object to having the Court strike the words “raid”, or “arrest” or “prostitution”? You don’t object to that?

Mr. Dwight: I think the Court should strike them out and the jury be admonished, but I should say that type of procedure is highly prejudicial to the defendant and should not be countenanced by this Court, and the Supreme Court has definitely laid down that rule in the Corum case, that is, going to the order of proof.

The Court: The Court will and does now on its own motion strike the words of the witness of [23] “raid”, “arrest” or any word suggesting the offence of prostitution.

Mr. Young: As a matter of fact, I will withdraw the whole question.

Mr. Dwight: We may as well get it clear. Now, have you that Corum decision? Have you the advance decision? I want the Court to get the similarity. I take it from counsel’s remarks that he was attempting to get into evidence a statement

made by the defendant to this witness for the purpose of proving motive.

Mr. Young: I made no such statement.

Mr. Dwight: The offer that counsel makes now affirmatively shows that it is incompetent, irrelevant and immaterial. It affirmatively shows that the purpose of that testimony is simply to put the defendant's character in issue and that it is improper evidence to show improper character.

The Court: There was nothing from the questions testified to that suggested the purpose of raising the issue of character or bad character.

Mr. Dwight: Arresting them and taking them to the Police Station; you can't bring in evidence of the defendant being arrested. You can say that the defendant was convicted.

The Court: The Court has corrected that. The form of the question was not objectionable in any way. The answer responds to that question. The words of "arrest" and "raid" the Court has stricken in protection of the rights of the defendant and [24] the Court will make it clear to the jury that the question of the bad character or the character of the defendant is not in issue, nor is it the purpose of this evidence to put it in issue.

(The Court took a short recess.)

In Court.

(At 2:35 o'clock p. m., the Court reconvened, the defendant and respective counsel being present, and the jurors all present, the following further proceedings were had and testimony was given):

Mr. Dwight: May it please the Court, I want to apologize to the Court for being late. Shortly before two o'clock I asked the bailiff in Judge Brooks' Court to notify this Court that I would be there for a few minutes. I am sorry that the Court did not get the word.

The Court: Thank you. Your apology is accepted. You gentlemen stipulate the jury is present?

Mr. Young: So stipulated; also the defendant.

Mr. Dwight: Yes.

The Court: Let the record so show. Now, the Court has on its own motion stricken from the record the words which this witness (Perry W. Parker) has used of "raid", "arrest" or any suggestion of any offense at this time. The purpose of this testimony is merely to fix the time and place and the jury is instructed not to take any evidence—this evidence which has been stricken in any way as putting in issue the character of the defendant. It is not for that purpose at all and should not be considered by you. [25]

Mr. Young: May we proceed, your Honor?

(Testimony of Perry W. Parker.)

The Court: Proceed.

Mr. Young: Thank you.

Direct Examination

(Continued)

By Mr. Young:

Q. Mr. Parker, you testified roughly as to the first time that you were at "Speed" Warren's place. Do you recall the date of the last time you were there, approximately?

A. That was around June 1, 1936.

Q. Around June 1, 1936. About what time of day did you go there?

A. It was on a Monday night between eight and nine p. m.

Q. And what did you do, if anything, at that time in relation to the defendant?

A. The defendant was at her home. I went in and arrested the defendant and three other girls.

Q. Do you know the names of the girls?

Mr. Dwight: Now, may I have my same objection to this testimony as incompetent, irrelevant and immaterial; furthermore, as tending to adduce in evidence certain evidence that was procured in violation of the Constitution of the United States, the evidence in this so-called visit having been suppressed by the Honorable Judge Peters, the District Magistrate of Wahiawa. I object to this evidence being stated in the presence of the jury.

The Court: I wonder if you, Mr. Parker, in making your answers will leave out the words

(Testimony of Perry W. Parker.)

“arrest” or “raid” or anything that implies a crime or offense at that time. The purpose of [26] your testimony is not to establish any evidence of any crime at that time, nor should you put before the jury there was such a possibility of such a crime. The Court will strike that word “arrest” out.

The Witness: What was the question?

The Court: The word “arrest” will be stricken out and the jury asked to disregard it. The purpose of this testimony is not to put in issue the character of the defendant at all but merely to establish the time and place.

Mr. Dwight: May I have my exception to the ruling? I think it goes further than the Court’s ruling.

The Court: All right. You may have your exception.

Mr. Young: Mr. Parker, the Court doesn’t want you to say anything about any legal relations.

Q. I want to know, did you go any place with her, did you do anything with “Speed” Warren at that time?

A. I can’t answer that unless I use that word again.

Q. Did you walk her some place?

A. I drove her in my car down the police station.

Q. Drove from her house? A. Yes.

(Testimony of Perry W. Parker.)

Q. Anybody else with you?

A. They were all together; there were three other girls and two police officers.

Q. There were three other girls and two police officers with you? [27]

A. No, we didn't go all in one car; we split up.

Q. Do you know the names of those girls?

A. Yes, I do.

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial. It proves nothing of the issues raised by this indictment.

The Court: The Court appreciates it is preliminary evidence and overrules the objection.

Mr. Dwight: Save an exception.

A. Lou Rodgers, Betty Ward and Mollie Norton.

Q. And you took them to the police station?

A. That is correct.

Q. Will you step down here? (Indicating Prosecution's Exhibit A tacked on blackboard.)

A. (The witness does as directed.)

Q. Are you acquainted with that general vicinity at Wahiawa (referring to Prosecution's Exhibit A)?

A. Yes.

Q. Do you know which street she lives on?

A. Muliwai.

Q. This is Muliwai Avenue; the arrow points north this way (indicating); Olive Avenue this way (indicating); Kuahiwi Avenue this way (indicating on Exhibit A); there is a land mark here (indicating); Bishop First National Bank there

(Testimony of Perry W. Parker.)

(indicating); this is railroad track over here (indicating). You understand this diagram sufficiently to point out where this house was that you found "Speed" Warren in that day that you testified to?

A. Yes.

Q. Will you point it out on the map, please?

[28]

A. Yes, right here (indicating on Exhibit A).

Q. That was the house?

A. We came out this way (indicating), block and about a half on the righthand side.

Q. Righthand side as you go towards the mountain?

A. Yes, that is right.

Mr. Young: May the record show it is the lot marked "Marvin Connell"?

The Court: The location designated as "Marvin Connell."

Q. Was that the place you took "Speed" Warren from in your automobile?

A. Yes, that is the place.

Q. Those girls came out of that house?

A. Yes.

Q. Betty, Lou and Mollie came out of that house?

A. Yes.

Mr. Young: No further questions.

Mr. Dwight: I make a motion to strike all of the evidence of this witness as incompetent, irrelevant and immaterial—

The Court: Motion denied.

Mr. Dwight (continuing): Having no bearing on the issues raised by the indictment.

(Testimony of Perry W. Parker.)

The Court: Motion denied.

Mr. Dwight: Save an exception.

The Court: The defendant and these three girls were the three of them?

The Witness: Three of them.

The Court: Did you later see them some [29] other place in Honolulu? When they left that house in your automobile, who was in your automobile besides yourself?

The Witness: A. I don't know but we all ended up in the vice squad in Honolulu.

By Mr. Young:

Q. Would you recognize any of those girls if you saw them again?

A. Yes, I can recognize all of them.

Mr. Young: May I call one for identification, Lou Rodgers?

(The bailiff calls a woman as directed and a woman enters the court-room.)

Q. Could you tell me whether or not this is one of the girls? (Referring to the woman who entered the court-room.)

A. Yes.

Q. What is her name? A. Lou Rodgers.

Mr. Young (to Lou Rodgers): Q. What is your name? A. Lou Rodgers.

Mr. Young: May the record show that Lou Rodgers was one of the girls in the car at that time?

The Court: Let the record so show.

ALBERT FRAGA,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Albert Fraga. [30]

Q. You are a police officer for the City and County of Honolulu? A. Yes, sir.

Q. How long have you been a police officer, Mr. Fraga? A. About seven years.

Q. What are your duties, just briefly, as a police officer?

A. I am attached to the Identification Bureau, which takes in the registration of police records and the taking of photographs.

Q. And you take photographs, then, in connection with your official duties? A. Yes, sir.

Q. Will you state whether or not you ever knew a person by the name of Wah Choon Lee?

A. I did.

Q. Did you know him personally?

A. Yes.

Q. Is that person alive or dead, to your knowledge? A. No, sir, he is dead.

Q. In connection with your official duties, did you ever photograph the body of Wah Choon Lee?

A. I did.

Mr. Dwight: I will admit Wah Choon Lee is dead.

(Testimony of Albert Fraga.)

The Court: Let the record so show.

Q. Where did you photograph him?

A. City and County morgue.

Q. When? A. August 4. [31]

Q. What time? A. About ten a. m.

Q. Did you develop those negatives that you took? A. I did.

Q. Will you recognize the pictures that you developed? A. Yes.

Q. Will you look at these two pictures and see if they are the pictures you took? (Handing pictures to witness.)

Mr. Dwight: Let me see them. (Examining same.)

Q. Will you look at these pictures, please, and state what they are, if you know? (Handing pictures to witness.)

The Court: Q. Do you know?

A. Yes.

Q. What is this?

A. This represents the body of officer Wah Choon Lee, as I saw him at the morgue on the morning of the fourth of August, 1937, at ten a. m., after his clothing was taken off.

Q. You took this photograph and you developed it yourself? A. Yes.

Mr. Young: May this be received in evidence?

(Testimony of Albert Fraga.)

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial, as prejudicial to the defendant. There is no necessity for the accumulation of evidence. If it is for the purpose of proving death, the defendant has already admitted that Wah Choon Lee is dead. It is cumulative; it is not the best evidence; it is secondary; it proves no fact in issue because that particular fact has been admitted. [32]

The Court: Is that your only purpose?

Mr. Young: My purpose is to establish the fact of death, establish the identity of deceased and for the further reason we offer to prove by one of these pictures a very material part of the evidence indicating a certain wound upon the deceased.

Mr. Dwight: That is the reason I objected. It is not the best evidence. They have definite testimony; they can have direct testimony as to the nature of any marks on the body of the deceased. This is secondary. I object on the ground it is not the best evidence.

Mr. Young: Photographs are always admissible. They are true and correct of what they saw.

Mr. Dwight: They took the picture and are using it for an entirely different purpose to prove something that can be proved by direct evidence. They had a doctor perform the autopsy. He is the only person who can testify. They are bringing in something that is not the best evidence.

(Testimony of Albert Fraga.)

The Court: The Court will overrule the objection.

Mr. Dwight: Save an exception.

The Court: Exception may be noted. It will be received as Exhibit B.

(The picture referred to was received in evidence and marked "Prosecution's Exhibit B.") [33]

By Mr. Young:

Q. Now, this other picture that you have in your hand, will you please tell the Court and jury what that is without showing the jury?

A. This represents the upper portion of officer Wah Choon Lee, showing a portion of his right hand.

Q. Is this the way you saw it at the time you took it? A. Yes, sir.

Q. When did you take that picture?

A. On the morning of the 4th of August, 1937.

Q. This is a true and correct copy of that negative, that photograph that you took at the time and place? A. (Examining the same) Yes.

Q. This is Wah Choon Lee, the man you knew?

A. Yes, sir.

Mr. Young: May this be received in evidence as Territory's Exhibit "C", I believe, it is?

By the Court:

Q. Both of these pictures were taken at the same time? A. Yes.

Q. August 4? A. August 4.

(Testimony of Albert Fraga.)

Q. What time? A. At about ten a. m.

Mr. Dwight: What was the last exhibit, the first photograph?

The Court: B.

Mr. Dwight: May it please the Court, I object to the introduction in evidence of this picture [34] upon the ground already stated, to-wit, that for the purpose of proving death the fact has already been admitted; second, that it is cumulative and the photograph already in evidence shows the body of the deceased, which was introduced in evidence over objection, and I further object, may it please the Court, upon the ground that it is not the best evidence. I understand that this particular photograph is being offered for a certain definite purpose, which can be proved by direct testimony.

The Court: What is the purpose of offering Exhibit C in addition to Exhibit B?

Mr. Young: "C", the particular purpose is showing the nature of the wound. The authorities are all agreed that a picture of the deceased may be put in evidence where the nature of the wound is material to the prosecution's case. Counsel cannot stipulate our case. We have a right to prove it the way we want to. I can furnish your Honor ample authorities along that line.

Mr. Dwight: After all the Court conducts the trial and not the Public Prosecutor. I don't think counsel's remarks need answering. That particular picture is a part of the body. That can be proved

(Testimony of Albert Fraga.)

by the doctor who conducted the autopsy, the only man who is an expert and who can definitely describe any marks on the body. That does not indicate anything. How do I [35] know it wasn't put there by someone else.

The Court: Objection will be overruled.

Mr. Dwight: Save an exception. May I be permitted to cross examine this witness before the Court finally rules on this photograph?

The Court: You may cross examine him.

Cross Examination

By Mr. Dwight:

Q. Mr. Fraga, did you touch the body at any time before you photographed it?

A. Yes, sir.

Q. Did you put any powders on the hand of this deceased before you photographed it?

A. No, sir.

Q. You didn't use any means common to photographers to bring out certain things?

A. No, sir.

Q. You took this picture of the body just as you saw it in the morgue?

A. Yes, sir.

Q. You don't know who had handled the man between the time you took the picture and the time he died?

A. I don't know.

Q. When did you take this picture?

A. August 4, 1937.

Q. Had an autopsy been performed?

A. No, sir.

(Testimony of Albert Fraga.)

Q. It was taken before the autopsy was performed on the body? A. Yes, sir. [36]

The Court: It will be received as Exhibit "C" in evidence.

(The picture referred to was received in evidence and marked "Prosecution's exhibit C.")

Mr. Dwight: May I save an exception?

The Court: Exception noted.

Mr. Young: No further questions.

The Court: Any further cross examination?

Mr. Dwight: No further cross examination.

Mr. Young: Showing to the jury, now, the Exhibits "B" and "C" in evidence, your Honor.

(Mr. Young handed the pictures, Prosecution's Exhibits "B" and "C", to the jury.)

LOU RODGERS,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Mr. Young: Will your Honor excuse me for just a moment? I would like the jury to finish with the exhibits before I question her.

The Court: All right.

Q. What is your name, please?

A. Lou Rodgers.

Q. Where do you live? A. Wahiawa.

(Testimony of Lou Rodgers.)

Q. What street in Wahiawa?

A. Citrus and Olive.

Mr. Young: Will you speak just a little louder, please, Miss Rodgers, and face the jury, [37] please. Just speak up so we can all hear you.

Q. How long have you been living at Wahiawa?

A. Four years.

Q. Do you know a person by the name of Ilene Warren alias "Speed" Warren? A. I do.

Q. How long have you known her?

A. Four years.

Q. Is she in the court-room here now?

A. Yes.

Q. Will you indicate where she is?

A. There (indicating the defendant).

Mr. Young: May the record show the identification?

Q. You know this person by any other names?

A. No, I don't.

The Court: Let the record show the witness identified the defendant.

Q. You just know her by Ilene "Speed" Warren? A. I do.

Q. When did you first meet her?

A. August 24, 1934.

Q. 1934. Did you know her in the year 1936?

A. I did.

Q. There has been some testimony that you were present at her house on June 1, 1936. Do you recall whether or not you were? A. I was.

(Testimony of Lou Rodgers.)

Q. At what place was that? A. Wahiawa.

[38]

Q. What place?

A. I can't pronounce the street.

Q. Who was in charge? What kind of a place was it?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial; upon the further ground it is an attempt to put the character of this witness in issue.

Mr. Young: I want to know whether it was a store, hotel or what, your Honor. I submit the question, your Honor.

The Court: Objection overruled.

Mr. Dwight: Exception.

The Court: Exception noted.

Q. What kind of a building was it?

A. A frame building.

Q. Was it a house? A. It was a home.

Q. Do you know whose home it was?

A. Hers (indicating the defendant).

Q. Now, just a little louder, please?

A. Hers (again indicating the defendant).

Q. You mean by "hers" Ilene Warren?

A. Yes.

Q. Do you know from your own knowledge whether or not she owned that place?

A. I know.

Q. You know?

A. I do not know whether she does.

(Testimony of Lou Rodgers.)

Q. You do know she was living there at the time, June 1, 1936, is that correct? A. Yes. [39]

Q. What were you doing at the house at that time?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial. What has that got to do with the issues here, your Honor?

Mr. Young: Does your Honor desire me to make an offer of proof in order to obviate any more objections along these lines?

The Court: No objections to making an offer of proof. The jury will remain in their seats and the Court will step in chambers for that offer of proof.

In Chambers 3:00 p. m.

(Thereupon the Court and respective counsel reconvened in chambers and the following proceedings were had:)

The Court: Just let the record show this is an offer of proof suggested by both the counsel for the Territory and defense, meeting in chambers, not in the presence of the jury.

Mr. Young: We propose to prove by this witness along the line that is being followed now in the examination, that at the time of the police raid, at the time the officer took her into custody with "Speed" Warren, she was a prostitute in the home of "Speed" Warren; she was working for "Speed" Warren as a prostitute on that date, and the purpose of that testimony, your Honor, is to show that

“Speed” Warren at that time built up an animosity towards the police, which later grew and which gave her the foundation and [40] basis leading up to this particular case, the motive and malice. It is circumstantial evidence and we are entitled to show why she barricaded that place, what the foundation was.

Mr. Dwight: If counsel has any statement from Lou Rodgers or if Lou Rodgers will testify that the defendant made any statement concerning this, possibly it would be admissible, provided they could show the corpus delicti.

Mr. Young: She could say whom she worked for.

Mr. Dwight: That has no place in this. You are bringing directly to the jury the character of this defendant; that is just what you are doing.

The Court: Just one minute.

Mr. Dwight: I object to the offer of proof on the ground that the offer of proof is not material to any of the issues raised by the indictment; that the offer of proof directly brings before the jury the question of the defendant’s character; upon the further ground that if the offer doesn’t offer to prove any statement—that is the difficulty—if they offered to prove a statement of the defendant, that and that alone would be admissible, and that is the only thing they could show to show motive.

(The offer of proof on pages 40 and 41 was read.) (Augument.)

Mr. Young: I will state for the purpose of the record I am going to prove by this witness [41] what I have stated in the record and I will give the Court the assurance at this time that other witnesses will be produced, other than this witness, to show that this animosity began at this time and existed up until the time of the murder.

The Court: In other words, that this witness is merely a part of a general scheme and theory.

Mr. Young: That is right. In other words, to be more frank, "Speed" Warren at that time developed an animosity towards the police. She had determined she was going to keep the police out of her place, if she had to barricade it, so that she could ply her trade. When the police did raid her, she was plying her trade of prostitution, showing a link between the case to her motive and identity.

Mr. Dwight: The only question the Court has to pass on here is the relevancy of a fact and that fact was that on June first "Speed" was running a house of prostitution and on June first this witness was a prostitute in her house. Where is the materiality of that statement?

The Court: The Court is ready to rule. The objection to the offer of proof is overruled. The purpose of this offer is apparent from the offer and is not made to put in issue the character or reputation of the defendant. It is offered as a circumstance in proof of motive, [42] malice and identity.

(Testimony of Lou Rodgers.)

Mr. Young: Malice, motive and identity.

Mr. Dwight: May I save an exception to the Court's ruling?

The Court: You may have your exception.

Mr. Dwight: And may my exception go to her entire testimony?

The Court: Objection and exception noted to this entire offer of proof and testimony.

In Court 3:15 p. m.

(Thereupon the Court and respective counsel reconvened in the court-room and the following proceedings were had and testimony given:)

(The reporter read the last question on page 40, as follows:)

“Question: What were you doing at the house at that time?”

The Court: Will you please answer that question?

The Witness: I don't understand it.

By Mr. Young:

Q. Were you working there?

A. I was living there.

Q. What else were you doing, if anything?

A. Keeping house.

Q. Where did you live at that time?

A. I lived with Ilene Warren.

Mr. Young: Beg pardon?

A. (Repeating) I lived with Ilene Warren.

Q. How did you make your money?

(Testimony of Lou Rodgers.)

Mr. Dwight: I object to that as incompetent, [43] irrelevant and immaterial, your Honor, the question having already been asked and answered.

The Court: Objection overruled.

Mr. Dwight: Note an exception.

The Court: Exception allowed.

Mr. Dwight: Has this witness been informed as to her constitutional rights?

The Court: Will you read the question?

(The reporter read the last question on page 43, as follows:

“Question: How did you make your money?”

By Mr. Young:

Q. In other words, did you do some work there of some kind by which you got some money?

A. Well, I better not answer that.

Q. Why don't you want to answer that?

(There was no answer.)

Mr. Young: I think your Honor should advise the witness.

By The Court:

Q. You say you don't want to answer that question? A. I would rather not.

Q. You say it is because you don't want to incriminate yourself? A. That is right.

(Testimony of Lou Rodgers.)

By Mr. Young:

Q. I understand you refuse to answer that because you claim your constitutional privilege; is that right? A. Yes.

Q. You saw this police officer that left the court- [44] room about the time you came in?

A. Yes.

Q. Did you go any place with him on June 1, 1936? A. Not on June first.

Q. When did you go with him?

A. June second.

Q. Where did you go with him?

A. Police Department.

Q. And who went with you?

A. Ilene Warren.

Q. The defendant? A. Yes.

Q. Any other girls? A. Two others.

Q. Two of you? A. Two other girls.

Q. Do you know what those girls were doing there while in "Speed" Warren's house?

A. No.

Q. You do not. Were they living there with you? A. I don't know.

The Court: Mr. Young, the grand jury desires to make its partial report to me. The jury not having had a recess since two o'clock, the Court will therefore declare a recess and ask them to leave the room, together with all witnesses and all others not connected with the grand jury.

(Testimony of Lou Rodgers.)

Mr. Dwight: I think they can remain; they are making a partial report. [45]

(A brief recess was taken.)

(The reporter read the last question and *and* answer on page 45, as follows:)

“Question: You do not. Were they living there with you?”

“Answer: I don’t know.”

By Mr. Young:

Q. Do you know whether they were living with you?

Mr. Dwight: Objected to as already asked and answered.

The Court: Objection overruled.

A. They were living in the same house.

Q. Do you know of your own knowledge what they were doing there? A. Yes.

Q. What?

A. You mean going in and out, visiting them.

Q. Now, Miss Rodgers, did you ever have any conversation with “Speed” Warren after the time that you went down to the station, after the police officer Parker took you away from there, did you ever have any conversation with her in regard to the police?

Mr. Dwight: May I ask the Court to instruct the witness to answer that yes or no?

The Court: (To the witness) Answer that yes or no.

(Testimony of Lou Rodgers.)

The Witness: Repeat that again so I can have it plainer.

(The last question was read.)

A. Yes.

By Mr. Young:

Q. What was the nature of that conversation?
[46]

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial, as calling for hearsay evidence, having no bearing upon the issues in this case.

The Court: Objection overruled.

Mr. Dwight: Save an exception.

By Mr. Young:

Q. Will you tell us that entire conversation, what she said to you?

Mr. Dwight: Fix the date.

Q. When was the time of this conversation?

A. Sometime after the second of June.

Q. About how long, approximately?

A. I don't know; just about two days, possibly a week.

Q. Now, you tell us what that conversation was, what she said to you.

A. Well, she wanted to wire the building up with electricity. She wanted to know what I thought about it so I gave her my opinion. She went down to see her attorney, to see if it would be O. K. Her attorney said he didn't think——

(Testimony of Lou Rodgers.)

Mr. Dwight: I am going to move to strike that answer as incompetent, irrelevant and immaterial, calling for hearsay, unless the witness was personally present.

The Witness: I was.

By Mr. Young:

Q. Miss Rodgers, just before we go to this attorney episode, what else was said in regard to this equipment, this wiring of the house in your presence before she went [47] to the attorney?

A. Nothing, except——

Mr. Dwight: I am going to make a further objection on the ground it is incompetent, irrelevant and immaterial, as compelling this defendant to be a witness against herself, as evidence having been obtained after an illegal search and seizure by the government authorities and it was knowledge obtained in that illegal search that caused this witness to come here to testify. I cite the case of——

Mr. Young: Submit the question.

The Court: Objection overruled.

Mr. Dwight: Exception.

By Mr. Young:

Q. What was the nature of that conversation, Miss Rodgers?

A. Well, she just wanted to know what she had to do to fix the place up on account of burglars and drunken soldiers. In a kidding way I said, "Put some iron bars around the place." She talked

(Testimony of Lou Rodgers.)

over about putting electric wires around the place. She went to consult her attorney.

Q. Did she say that had any relation to the police?

A. Well, yes and no. She didn't offhand say it. She said it would help to get rid of the cops or to keep them away.

Q. That was a few days after the raid?

A. Yes.

Q. Now, did you hear her talk to any other person about this matter, about the wiring of her place and so on? [48]

A. Yes.

Q. What persons? A. John Kiehm.

Q. Where did she talk to John Kiehm?

A. I don't remember whether it was at the garage or her house.

Q. It was either one of the two places, you can't remember, is that true? A. Yes.

Q. Will you know John Kiehm if you saw him again? A. Yes.

Mr. Young: (To the Bailiff) Will you call John Kiehm?

(The bailiff responds by bringing into the courtroom a man.)

Q. Look at this gentleman. Do you know who he is? A. Yes.

Q. Who is he? A. John Kiehm.

Q. Is that the same John Kiehm you are testifying about? A. Yes.

(Testimony of Lou Rodgers.)

Q. Where did "Speed" Warren speak to him?

A. In his office.

Q. Where is his office?

A. Damon building.

Q. You recall the conversation that passed between him and "Speed" Warren in connection with the wiring?

A. She went up and asked him about it. He said he did not think it would do any harm. She said, "Well, we will see about it."

Q. Did she tell him why she wanted the wiring around [50] there?

A. The same reasons she told me.

Q. To keep burglars and the police away and the drunken soldiers, is that right? A. Yes.

Q. These three things? A. Yes.

Q. Now, do you know personally how "Speed" Warren felt about the officers taking her away?

Mr. Dwight: That is calling for the conclusion of this witness. I submit it is incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Young:

Q. Now, after this—How long after the conversation—I will withdraw the question. Do you know, of your own knowledge, whether after this conversation with Mr. Dwight and after the conversation with Kiehm, do you know of your own knowledge whether any electrical equipment was ever put in

(Testimony of Lou Rodgers.)

that house after you were there? A. Yes.

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial and is compelling the defendant to be a witness against herself.

The Court: Objection overruled.

Mr. Dwight: Exception.

The Court: Exception noted.

By Mr. Young:

Q. Your answer was yes? A. Yes. [51]

Q. Will you please tell us just what you know about that electrical equipment that was put in the house, that was put in there after this conversation with Mr. Dwight and Kiehm, everything you know about it?

A. Well, she bought the wiring. So far as I know Kiehm put it in from the front door over to another door, to the back door.

Mr. Dwight: May my objection and exception run to all this testimony?

The Court: It may.

A. (Continuing) I said when she got the material and everything for this wiring and a steel plate for the door, she got Kiehm down there. They fixed the wiring up from the front door to the back door.

By Mr. Young:

Q. Was there any other device in there that you recall? A. Switch.

Q. Where was the switch located? Do you know?

A. On the stairway going up on the righthand side.

(Testimony of Lou Rodgers.)

Q. That is on the ground floor?

A. As you come in the front.

Q. Now, was there any other equipment that you saw there of an electrical nature?

A. Batteries, I guess it was.

Q. Where was that located?

A. At the top of the door facing—leading downstairs.

Q. Do you know whether or not, from your own personal knowledge, the front door was wired to the switch? A. Yes.

Q. Are you acquainted with all the rooms downstairs [52] in that house? A. Yes.

Q. You know just about where they are located?

A. I did up until the time I left.

Q. Up until the time you left. How many rooms are there downstairs?

A. There is one large living-room and four bedrooms, a closed-in back porch, and a hallway, a small ante-room leading from the front door into the living-room.

Q. Any stairs leading from the ground floor to the top floor?

A. There is one on the lefthand side and one on the righthand side.

Q. As you come in the front door?

A. Yes.

Q. You believe you could draw or sketch a little diagram of this house for us? A. Yes.

(Testimony of Lou Rodgers.)

Q. (Continuing) of the ground floor? Now, Miss Rodgers, I am showing you a map——

Mr. Dwight: I object to the exhibiting of this map or whatever it is to this witness. If this witness wants to draw a plan, the witness can draw a plan. Certainly she has to testify from her own knowledge, but not by having it fed to her by other people.

Mr. Young: If your Honor please, she has given in her testimony the number of rooms, what they were and so on. By the Court looking at this, it will see this is nothing but lines drawn. [53] I am going to ask the witness whether or not this is a correct diagram of what the place looked like to her at the time she was there. I want her merely to illustrate the testimony by this diagram.

The Court: The Court will sustain the objection.

Mr. Young: I guess we will have to draw one, then.

The Court: I suggest a smaller piece of paper.

Mr. Young: I will question the witness further.

Q. Now, Miss Rodgers, are you sufficiently acquainted with the locality where "Speed" Warren lived at this time to place it on a plat or map?

A. Yes.

Q. In relation to the various streets in Wahiawa? A. I think I can.

Q. Will you step down to this board a moment, please? (The witness responds as directed) This

(Testimony of Lou Rodgers.)

is a plat in evidence. Prosecution's Exhibit "A" (indicating on board). This is Kuahiwi Street (indicating), Avacado Avenue, the court house there, the railroad down here, this is Muliwai Avenue (indicating). Now, having those land marks in mind and knowing the names, can you point out about the place where "Speed" Warren's house was on the date you were testifying to?

A. It was on this street up that way (indicating).

Q. In this approximate area. Can you say which lot it was on?

A. Where should the house be?

Q. All we are interested in is if you can point out where "Speed" Warren's house was.

A. Yes. [54]

Q. Will you point to it, please?

A. This place here (indicating on Ex. "A").

Mr. Young: May the record show the witness indicates the lot marked "Marvin Connell"?

The Court: The record may so show.

By Mr. Young:

Q. And it was in the house on the lot that you pointed to where you lived with "Speed" Warren and the other girls that you testified to, is that correct? A. Yes.

Q. Where did you live in the house?

A. When I first came, I lived downstairs, then I moved upstairs.

Q. Was there a maid there? A. Yes.

(Testimony of Lou Rodgers.)

Q. What was her name?

A. A Japanese lady.

Q. Was there any other maid there?

A. Yes.

Q. What was her name?

A. Lucy McGuire.

Q. Would you know that person again if you saw her again? A. Yes.

Mr. Young: (To the bailiff) Call Lucy McGuire.

(The bailiff complies by bringing a lady into the court-room.)

Q. Did you see this lady (indicating same person)? A. Yes.

Q. What is her name? [55]

A. Lucy McGuire.

Q. Is this the maid that you testified to?

A. Yes.

Mr. Young: (To the same person) What is your name? A. Lucy McGuire.

Mr. Young: May the record show the identification of Lucy McGuire?

The Court: Let the record so show.

By Mr. Young:

Q. You say you first lived downstairs. Where did you live afterwards? A. Upstairs.

Q. Where did the other girls stay?

A. Downstairs.

Q. Do you know what those other girls were doing there? A. Yes.

(Testimony of Lou Rodgers.)

Q. What were they doing?

A. Having soldiers visit them.

Q. Soldiers visiting them. Pardon me just a moment. Did you ever have any soldiers visit you?

Mr. Dwight: May it please the Court, may the witness be instructed as to her constitutional rights?

The Court: The witness has already been instructed as to her constitutional rights. You do not have to answer any question if it will incriminate you. You may answer the question.

A. Yes, I had friends.

By Mr. Young:

Q. Do you know where "Speed" Warren got this wire and copper plate that you have testified to? Do you know that [56] of your own knowledge?

A. I can't recall where she got the wire. She got the copper plate from the Hawaiian Steel Iron Works.

Q. Were you with them at the time?

A. Yes.

Q. Did you know what she was buying it for?

A. Yes.

Q. She told you that? A. Yes.

Q. If you saw a picture of "Speed" Warren's house, would you know whether that was the house or not? A. Yes.

Q. I am going to show you some pictures here (handing pictures to the witness). Look at this

(Testimony of Lou Rodgers.)

picture (indicating). Tell me whether or not you know what that is.

A. (Examining same) That is leading into the front door.

Q. Of what?

A. Of "Speed" Warren's house.

Q. Is that the way it looked to you at the time you lived there? A. Yes.

Q. That is just the way it looked to you?

A. It did.

Q. From that view? A. Yes.

Mr. Young: May this be received in evidence?

The Court: Any objection?

Mr. Dwight: Subject to my general objection and exception as to all this witness' testimony. [57]

The Court: Prosecution's Exhibit "D" in evidence.

(The picture referred to was received in evidence and marked "Prosecution's Exhibit D".)

By Mr. Young:

Q. I will show you another picture (handing same to the witness). Do you know what that is?

A. (Examining the same) Yes.

Q. What is that? A. Road.

Q. What street is that?

A. I do know but I can't pronounce it.

Q. Which one is it on the map (Ex. "A")?

A. Muliwai.

Q. Is "Speed" Warren's home in that picture?

A. Yes.

(Testimony of Lou Rodgers.)

Q. Will you point to it?

A. (The witness indicates.)

Q. Is that the way it looked to you at the time you lived there? A. Yes, from a distance.

Mr. Young: May this be received in evidence, if your Honor please?

The Court: It may be received in evidence and marked "Prosecution's Exhibit E" in evidence.

(The picture referred to was received in evidence and marked "Prosecution's Exhibit E".)

By Mr. Young:

Q. And, similarly, this picture (handing same to the witness); do you know what that is? [58]

A. (Examining the same) Yes.

Q. What is that?

A. That is a picture of "Speed" Warren's home and garage.

Q. Did it look that way at the time you lived there? A. Yes.

Q. I will show you another picture (handing same to the witness). Do you know what that is?

A. (Examining the same) Yes.

Q. What is that?

A. That is "Speed" Warren's home—yard, rather.

Q. It looked that way at the time you were there, living there? A. Yes.

Mr. Young: May these two also be received in evidence?

(Testimony of Lou Rodgers.)

The Court: They may be received in evidence as Exhibits "F" and "G".

(The pictures referred to were received in evidence and marked "Prosecution's Exhibit F" and "Prosecution's Exhibit G", respectively.)

By Mr. Young:

Q. I am going to show you another picture (handing same to the witness). Have you ever seen that before?

A. (Examining the same) Yes.

Q. Do you know what that is?

Mr. Dwight: Just a moment. I am going to object as incompetent, irrelevant and immaterial—counsel has already exhibited the picture to me—upon the ground, if the Court will examine it, that [59] it is incompetent in this particular case. It is a photograph of something that has been suppressed.

Mr. Young: This, if your Honor please, is something that this witness can testify to, whether this was the condition existing when she was there.

Mr. Dwight: It is attempting to get into evidence indirectly what they cannot do directly. I think the Court better look at that photograph.

The Court: I will have to reserve my ruling on that until I ascertain who took it, when and how.

Mr. Young: May this be marked for identification?

(Testimony of Lou Rodgers.)

The Court: It may be marked for identification. It may be marked Exhibit H for identification.

(The picture referred to was marked "Prosecution's Exhibit H for identification".)

Mr. Young: It will not be exposed to the jury. I would like to have her say what it is.

The Court: It is for identification only at this time.

By Mr. Young:

Q. Do you know what this is? A. Yes.

Q. What is it?

A. "Speed" Warren's front door.

Q. Is that the way "Speed" Warren's front door looked at the time you lived there after she had the conversation with Kiehm and after she had the conversation with Mr. Dwight? [60]

A. It looks similar, although the brass looks a little bit higher up.

Mr. Dwight: I am going to move to strike all this testimony as highly prejudicial. The document has been identified. He is trying to get the substance of the picture in by means of questions and answers. I submit that it is entirely incompetent, irrelevant and immaterial.

The Court: The Court will strike that answer with reference to the highness or lowness of the door,—any description of how the exhibit looked,—and the jury instructed to disregard it until the matter is received in evidence.

(Testimony of Lou Rodgers.)

By Mr. Young:

Q. Did you see any one put anything on that front door?

A. I don't know what you mean.

Q. You testified she got certain wire and a plate and John Kiehm came over there and did some work over there. Did you see John Kiehm do any work on that door?

A. I don't know whether it was him or another.

Q. Was something put on that door after you heard the conversation between Mr. Dwight and Mr. Kiehm? A. Yes.

Q. What was put on that door?

A. Sheet iron, brass. I don't know whether it was brass or sheet iron. I know when I see it.

Q. Was that put on the outside or inside?

A. Outside.

Q. Do you know of your own knowledge whether any electrical wires were attached to that door?

[61]

A. Yes.

Q. Now can you sketch just briefly, if you can, from your recollection what that door looked like as you come in from the outside, about what size that sheet was?

A. Well, it is about the width of this table. (Indicating reporter's table)

Q. About the width of that table?

A. Maybe not as wide.

Q. Maybe not as wide, and about how long?

(Testimony of Lou Rodgers.)

A. About the length of that size, just enough to fit the door.

Q. Just enough to fit the door, did it reach all up and down the door? A. No.

Q. About how far from the bottom did it stop, or was it on the bottom of the door?

A. It was lacking about a foot from the top, then on down.

Q. About a foot from the top, about a foot of space left, then right on down to the bottom of the door?

A. So a person could see out of the top of the door.

Q. Now, to your knowledge, did "Speed" Warren ever put the current through that plate?

A. Yes.

Q. And how did she do that, by doing what?

A. Turning on the switch.

Q. And where was that switch located?

A. On the right hand side of the stairway going up, of the front room.

Q. As you come in the front door to the right hand side, [62] is that right? A. Yes.

Q. How far up the stairs, how far up, going towards upstairs was this switch located?

A. About the height of three steps.

Q. Height of what?

A. Height of three steps going up.

Q. Where was the switch attached, what part of the house was it attached to?

(Testimony of Lou Rodgers.)

A. On the side of the door casing.

Q. On the side of the door casing going up-stairs, is that correct? A. Yes.

Mr. Young: There is only about five minutes left. I would like the jury to see these exhibits for the remaining time, if I may show these. Showing the jury, for the purpose of the record, the exhibits marked "D", "E", "F" and "G", you gentlemen please look at those.

(Mr. Young handed the pictures, Prosecution's Exhibits "D", "E", "F" and "G", to the jury.)

Mr. Young: May this witness be excused for the day? I don't believe we have time to question her further. May this witness be excused from the stand and instructed to return?

The Court: Miss Rodgers, you will be excused from the stand and you are instructed to return tomorrow morning at 9:00 o'clock.

Mr. Young: May we have our 4:00 o'clock recess? [63]

The Court: Yes. There will be no afternoon session tomorrow. We have a rather long calendar.

Mr. Young: I have some witnesses, if your Honor will order them to return.

The Court: Bring them in.

Mr. Young: If the Court please, will the Court instruct Lucy McGuire and Mr. John Kiehm to return tomorrow morning at nine o'clock without

(Testimony of Lou Rodgers.)

further order of the Court. (Both witnesses were in the court-room.)

The Court: You two will return tomorrow morning at nine o'clock without further order of the Court. You are subpoenaed to return here tomorrow morning at nine o'clock. You will return here without fail. The Court will announce for the benefit of counsel and the jury we will adjourn until tomorrow morning at nine. There will be no session at all tomorrow afternoon, nor Saturday. You gentlemen of the jury are instructed not to discuss this case with any outside person or with anyone during the recess and adjournment of the Court and not to read the newspapers or any papers or anything whatsoever about this case. If anyone tries to approach you, let the Court know about it. You gentlemen are excused until tomorrow morning at nine o'clock. Court stands adjourned until that time.

(A recess was taken until Friday, February 4, 1932, at nine o'clock a. m.) [64]

Honolulu, T. H., Feb. 4, 1938.

(The trial was resumed.)

Mr. Young: Ready for the Territory.

Mr. Dwight: Ready for the defendant.

Mr. Young: Stipulate the jury and the defendant are present.

(Testimony of Lou Rodgers.)

The Court: Let the record show it is stipulated the jury and the defendant are present and both sides are ready to proceed.

Mr. Young: Your Honor, may I have the assistance of the bailiff of the Court to tack this up. (Referring to a large sheet of paper.)

The Court: Yes, call the bailiff.

LOU RODGERS,

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination

(continued)

By Mr. Young:

Q. Miss Rodgers, do you think you could draw this diagram better on a flat table or on the board?

A. Flat table.

Q. Step down here, please. Miss Rodgers, I want you to please draw a diagram as near as you can from your memory as to the general plan of the floor, bottom floor, of the home of Ilene "Speed" Warren at the time that you were there. You understand what I want? Here's a ruler and pencil. (The witness stepped down to the prosecutor's table and Mr. Young handed her a ruler and pencil.) Take your time and draw. May I suggest that you make the house about as square as this ruler so it [65] will be large enough for the jury to see, the general plan of the house, about this long, to scale?

(The witness draws on a piece of paper and resumed the stand.)

(Testimony of Lou Rodgers.)

Q. Miss Rodgers, will you please step down here just a moment? You have drawn a rough plan on this paper.

(The witness steps down to the prosecutor's table.)

Mr. Young: May we mark this, if your Honor please? What is the next letter?

The Court: "I".

Mr. Young: Prosecution's Exhibit "I" for identification?

The Court: All right, it may be marked "Exhibit I for identification."

(The drawing referred to was marked "Prosecution's Exhibit I for identification.")

By Mr. Young:

Q. Pointing to Exhibit "I" for identification, Miss Rodgers, will you kindly explain what this represents? A. The home of Mrs. Warren.

Q. Now, you have various lines drawn through there, what do those represent?

A. Partitions.

Q. In other words, do I understand this is a room, this square here (indicating)? A. Yes.

Q. What room is this?

A. The living-room downstairs.

Q. Living-room downstairs. Now, with reference to this large diagram, which part of this house faces [66] Muliwai Avenue?

A. This side (indicating).

(Testimony of Lou Rodgers.)

Q. This side, and which side of the house is the front door on? A. The same side.

Q. The same side, up here (indicating), is that correct? May we mark this "X-1", the general direction? (Marking on paper.) The front door is where? Will you point where on the diagram?

A. Approximately there.

Q. Approximately there. Now, as you come in the front door,—I believe you testified that this is a two-story building? A. Yes.

Q. As you come in the front door, are there any steps leading to upstairs? A. Yes.

Q. Now, where are these steps located? Will you point them out?

A. This is the front going up the front stairs (indicating) and this is going up the back stairs (indicating).

Q. Going in the front door and the stairs are on your right going upstairs? A. Yes.

Q. How far, approximately, is it, Miss Rodgers, from the door to the beginning of the steps going up on the righthand side, just roughly, how many feet? A. Well, I couldn't say.

Q. Will you point out an object in here, something to show us how far it is from the front door as you come [67] in to the first step on the righthand side? A. Step and a half.

Q. What do you mean by a "step and a half", the steps you take with your feet?

A. The steps you take with your feet.

(Testimony of Lou Rodgers.)

Q. Will you point out some object on the floor just about how far it is from the door as you come in to the first step?

A. From my foot to there (indicating).

Q. About two feet from the door here to the first step, is that correct, approximately?

A. Yes.

Q. Now, with reference to this (indicating), are these stair marks that you have in your diagram, with reference to this (indicating), how are they situated with reference to the front door? Are they just ahead of the front door?

A. Just ahead of the front door.

Q. If you turn to the right, you can take these steps going upstairs also, is that correct?

A. Yes.

Q. Where do these steps lead upstairs?

A. To the kitchen.

Q. Where do these steps lead to going this direction to the right (indicating)?

A. Front living-room upstairs.

Q. Front living-room upstairs. Now, yesterday you gave some testimony about a certain switch that was on the right stairway. Will you indicate with a cross about where that switch is located?

Mr. Dwight: May it be understood my objection goes to this testimony today as well as yesterday and save my exception?

The Court: Yes.

(Testimony of Lou Rodgers.)

By Mr. Young:

Q. Put a cross about where that switch is located. A. (The witness marks on paper).

Q. That cross there represents the switch, and approximately how far would that switch be from the door as you come in on the righthand side; as you come in the door, how far would that switch be to your right?

A. Well, I couldn't say.

Q. We just want a rough idea. We want a rough idea. Can you point out some object, indicating the distance?

A. About this height (indicating).

Q. About that height off the floor?

The Court: Indicating what?

Mr. Dwight: Let us have that measure.

The Court: Indicating what?

Mr. Young: The top of the post (of the jury box.)

Mr. Dwight: About four feet.

Mr. Young: I suppose about four feet.

The Court: Stipulated about four feet to the top of the rail, top of the post of the jury rail.

By Mr. Young:

Q. And about how far going to your right, the distance? A. Not very far.

Q. What *to* you mean by "not very far"?

A. About half a room length.

Q. That is, standing in the door, could you reach the [69] switch? A. Yes.

(Testimony of Lou Rodgers.)

Q. Standing in the front door, you could reach the switch, reaching out that way (demonstrating)?

A. Yes.

Q. That is to your best recollection?

A. Yes.

Q. Now, what, briefly, are these rooms you have here? (Indicating) A. Bedrooms.

Q. Bedrooms, downstairs bedrooms?

A. Yes.

Q. How many of them were there?

A. Four.

Q. What does this represent here (indicating)?

Mr. Dwight: Will you indicate the line drawn between the foot of the front steps back? I mean this line here (indicating).

A. It doesn't represent anything.

By Mr. Young:

Q. What does this space here represent between this door and the stairway here (indicating)? This is the stairway (indicating). You had a door marked over here (indicating). What does this space represent (indicating)?

A. Well, it don't represent anything. There is not anything there.

Q. What do you mean,—it is not a room, it is a hallway or what?

A. There isn't anything there.

Q. Now, can you go directly from the front door into [70] the living-room? A. Yes.

(Testimony of Lou Rodgers.)

Q. Is there any door between the living-room and the front door? A. Yes.

Q. You have a door marked on there (indicating). Is that about where the door is? A. Yes.

Q. Now, you testified yesterday, Miss Rodgers, that there was some electrical equipment in some other room. Do you know where that was with reference to this diagram?

A. Over this door here (indicating).

Q. Over this door here. May we mark this "X-2"? (Marking on diagram) That is where there was some other electrical equipment? A. Yes.

Q. Over that door. Now, you said yesterday that the wires ran to the front door and the back door. Was that not your testimony? A. Yes.

Q. Where was the back door located that you are talking about?

A. About here (indicating on diagram).

Q. Down about here, the back door?

A. Yes.

Q. And this is the front door that you were talking about also? A. Yes.

Q. You know of your own personal knowledge there were wires leading to that door? [71]

A. Yes.

Q. Now, were there any windows upstairs on the second floor in about this vicinity, indicating the top of the stairs on the righthand side, for the purpose of the record? A. One.

(Testimony of Lou Rodgers.)

Q. Do you know whether or not you could see from that window down, if you were up there looking down, outside the front door? Do you recall?

A. Yes.

Q. You could? A. Yes.

Mr. Young: I think that is all. Take the stand, please. (The witness resumes the witness stand.)

Q. Now, you gave certain testimony yesterday about overhearing a conversation between Mr. Dwight and the defendant in this case. Approximately how long was that after the police took you from that home about June 1st or the 2nd of June?

A. About a week; maybe two days.

Q. About a week? A. Yes.

Q. You are absolutely sure of that conversation that you testified to? A. Yes.

Q. And that took place in his office?

A. Yes.

Q. Now, after the electrical equipment was put in by Kiehm, was there ever a change made in that, that you know of? Did Kiehm ever come around and do anything about it? [72] A. Yes.

Q. What did he do the second time he came?

A. He fixed the transformer.

Q. He fixed the transformer. Where was the transformer located, Miss Rodgers?

A. On top of the door leading into the living-room downstairs.

(Testimony of Lou Rodgers.)

Q. Is that the place I marked "X-2" on the diagram? A. Yes.

Q. That was above the door? A. Yes.

Q. And do you remember what that transformer looked like? A. Yes.

Q. Can you describe it to us from your memory?

A. It was a black frame, like a box.

Q. About how big was it? Will you step down to the board, if you can draw about the size of that transformer with a pencil on the board, to your best memory? Just draw a square, whatever shape it was, about the size it was.

A. (The witness steps down to the board and draws on paper.)

Mr. Young: May we mark this square "transformer", your Honor? (Marking)

The Court: Yes, you may.

By Mr. Young:

Q. You say he fixed this transformer the second time he came back?

A. Not that one, but he had a small one there at first. [73]

Q. He had a small one in at first? A. Yes.

Q. Do you know what kind of a transformer that was? A. No, I don't.

Q. When he came back he did something with this large transformer, is that correct?

A. Yes.

Q. Did "Speed" Warren ever tell you not to touch that switch?

(Testimony of Lou Rodgers.)

Mr. Dwight: I am going to object upon the ground the question is leading.

Mr. Young: I will withdraw that question. No further questions.

The Court: Question withdrawn. May I ask just one question?

By the Court:

Q. You have drawn that transformer. Is that the size? What are the dimensions? It is square. How many feet or inches long or wide?

A. I imagine it is about six inches long, about 2½ inches wide.

Q. Six inches long and 2½ inches wide?

A. Yes.

Mr. Dwight: Are you through?

Mr. Young: Yes, I am all through.

Cross Examination

By Mr. Dwight:

Q. Miss Rodgers, yesterday shortly after you took the stand we had a recess. Do you recall that?

[74]

A. Yes.

Q. And you were taken into another court-room by Mr. Jardine? A. I was.

Q. Did you talk about your testimony that you were to give in this case at that time?

A. Yes.

Q. Did he tell you what to testify to?

A. No.

(Testimony of Lou Rodgers.)

Q. What was the nature of the conversation?

A. Because I made a mistake.

Q. He told you that you had made a mistake?

A. No.

Q. Well, what did he say? Will you speak out so the jury can hear you?

A. Well, it was about those two girls that happened to be living in the same place that I was.

Q. What is that again?

A. It was about those two girls that happened to be living in the same place that I was.

Q. Is that what he said to you?

A. No, he just asked me to tell the truth about it.

Q. He just asked you to tell the truth about it?

A. Yes.

Q. And did he tell you that you were not telling the truth on the stand? A. No, he did not.

Q. Did he give you any reason for telling you to tell the truth?

A. I don't understand you. [75]

Q. Why did he tell you to tell the truth?

Mr. Young: I object to this as calling for a conclusion of the witness and hearsay. I object to this as calling for hearsay testimony, calling for a conclusion of this witness as to what took place in somebody else's mind.

Mr. Dwight: May it please the Court, this is cross-examination.

(Testimony of Lou Rodgers.)

The Court: The Court will sustain the objection as to the form of that question, as to why he asked those questions.

By Mr. Dwight:

Q. What did Mr. Jardine say, his very words?

A. Who is Mr. Jardine?

Q. This gentleman who took you (indicating Mr. Jardine.)

A. He wasn't the only one took me there.

Q. He wasn't the *one* one took you there. Mr. Young took you there, too? A. Yes.

Q. What did Mr. Young say to you, if anything?

A. He said to go—to testify as to what I was supposed to.

Q. Is that what he said to you, go ahead and testify to what you are supposed to testify to? Is that what he said?

A. Well, he wanted to know if someone was talking to me. He wanted to know what I was trying to do, double cross him, I said no.

Q. What else? [76]

A. Nothing.

Q. Speak out loud so that I can get your answers down as well as the Court Reporter. What else did he say to you? A. That is all.

Q. That is all. He asked you if you were double-crossing him?

A. Not exactly. He said, "What are you doing, trying to double-cross?"

(Testimony of Lou Rodgers.)

Q. Did he offer you any immunity for testifying? A. I don't understand what you mean.

Q. Did he tell you if you testify here and incriminate yourself, he would not prosecute you?

A. No, he did not.

Q. Did Mr. Jardine make that statement to you?

A. No.

Q. That is all that happened?

A. That is all that happened.

Q. How long were you in that room?

A. Possibly about a second.

Q. You mean in the judge's chambers, about a second? A. About that time.

Q. You recall my pushing on the door and the conversation ceasing? A. No.

Q. You don't? A. No.

Q. Now, Miss Rodgers, you say you have known "Speed" for four years? A. Yes. [77]

Q. And how long did you live with "Speed"?

A. Two years, outside of two months and a half, taking a trip to the States.

Q. When did you go to the States?

A. March the 16th.

Q. March 16 of what year?

A. 1935, 1936—wait—1936.

Q. March 16 of 1936. Were you in my office prior to that time of your departure for the Coast?

A. Yes, I was.

Q. And do you recall the nature of your visit?

A. Yes.

(Testimony of Lou Rodgers.)

Q. That was in connection with an accident, wasn't it? A. Yes.

Q. That is all that happened, I prepared a suit for you and you signed it? A. I did.

Q. And what time of the year was that?

A. The first one was in October.

Q. When did you first come in?

A. In where?

Q. In my office.

A. All I can recall was about that accident.

Q. And what month was that?

A. If I am not mistaken, it was October.

Q. Of what year?

A. Well, it is before I left for the States.

Q. Aren't you a little bit mixed up on that, Miss Rodgers? [78]

A. Well, I can't say offhand.

Q. You had an accident on October 27, did you not?

A. I could not say the date; I know it was October.

Q. You were confined in the hospital for some period of time, were you not? A. Yes.

Q. After you were discharged from the hospital you came to me to bring suit. Do you recall that?

A. I did.

Q. Now, does that refresh your memory as to when you came into my office?

A. Well, that is all I can think, about then.

(Testimony of Lou Rodgers.)

Q. Was it about December 16, 1935, that you first came into my office in company with a Japanese boy, who was a so-called witness to this accident?

A. I didn't go in the office with him.

Q. You didn't; and at that time did Mrs. Warren accompany you?

A. Well, I don't recall.

Q. You don't recall. Shortly thereafter you signed a bill of complaint, didn't you?

A. Yes, sir.

Q. Then you went away?

A. I did.

Q. You signed the bill of complaint on the 20th of December in my office?

A. I don't recall that.

Q. Did you ever come into my office after you signed that bill of complaint?

A. I don't remember. I have been up there several [79] times but never did see you.

Q. You never saw me?

A. I have been there lots of times, you were busy or out.

Q. I am speaking of the times when you came in and had conversations with me after you signed the suit on the 20th of December. Did you ever come back into my office again? That is the 20th of December, 1935?

A. Well, offhand speaking, I don't remember.

Q. You recall, however, being arrested or taken to the police station by police officers around the first of June?

A. Of what year?

(Testimony of Lou Rodgers.)

Q. Of 1936. I will withdraw that question. You say you left on March 16 and went to the Coast?

A. Yes.

Q. When did you return to Honolulu?

A. On the 22nd of May.

Q. On the 22nd of May, and when did Mr. Parker, the police officer, take you to the police station?

A. The second of June.

Q. The second of June, and you say you remained at the police station on the 2nd of June?

A. Yes, overnight.

Q. Overnight. Did you see me at all on the 2nd of June or the 3rd of June?

A. Yes.

Q. Where?

A. At the police station.

Q. At the police station? [80]

A. Yes.

Q. You are sure about that?

A. Yes.

Q. You know who bailed you out?

A. No, I don't.

Mr. Young: If your Honor please, I think we have gone a little too far afield. It is incompetent, irrelevant and immaterial who bailed her out.

The Court: Objection overruled.

By Mr. Dwight:

Q. You know who bailed you out?

A. I do not.

Q. After you were discharged from the police station did you ever come into my office?

A. Yes.

Q. When was it?

(Testimony of Lou Rodgers.)

A. I don't recall what date or how many days later.

Q. Did you come in with anyone?

A. Ilene Warren.

Q. And that was the first time you came into my office after your arrest on June 1st or June 2nd, isn't that correct?

A. I don't know what you mean.

Q. That is the first time you came into my office after you were arrested or taken to the police station on either June 1st or June 2nd? A. No.

Q. When did you come into my office before that? A. When the accident happened. [81]

Q. I am not talking about the accident. I am talking about the time after June 1st when you came in. It was on June 4th, was it not?

A. I can't recall what time it was.

Q. And what was the nature of your visit, then?

A. Well, if I am not mistaken it was for bail money.

Q. Concerning your bail? A. Yes.

Q. That is correct. Was there any conversation at that time about the case or was it just concerning the bail?

A. Well, I don't remember.

Q. Did you come in again concerning this particular case that you were involved in?

A. Well, I can't say that either because I don't remember.

Q. You don't remember? A. No.

(Testimony of Lou Rodgers.)

Q. When did you come into my office and have this conversation with me that you testified to on direct examination?

Mr. Young: There is no evidence that she had a conversation.

By Mr. Dwight:

Q. When Mrs. Warren had a conversation with me when you were present?

A. Conversation about what?

Q. You remember testifying on direct examination about a conversation Mrs. Warren had with me in my office? A. Yes, I did. [82]

Q. When did that occur?

A. Well, I can't say whether it was two days after the arrest or a week but it was a conversation.

Q. Now, you have testified about what happened two days after your arrest that was concerning the bail money; now you said you came into my office again; do you know what date you came in?

A. No, I don't.

Q. Maybe I will refresh your memory. Do you remember when the case was set in the Wahiawa court for trial, what date?

A. I know it was on Friday; I don't know what date.

Q. That was the 9th. Your case was originally set for the 9th, wasn't it?

A. Well, I don't know what date Friday came on.

(Testimony of Lou Rodgers.)

Q. And were you in my office the day preceding the date the case was set for trial?

A. Would you mind asking me that question again.

Q. Were you in my office on the day preceding the date, the day before the date that the case was set for trial in the Wahiawa court?

A. I think I was.

Q. And was anyone else with you?

A. Mrs. Warren.

Q. Or were you alone?

A. Mrs. Warren was with me.

Q. Mrs. Warren was with you, and did you talk to me on that date?

A. Well, I didn't talk to you—she did—any more than to say good morning. [83]

Q. Did you say anything to me on that date?

A. She did all the talking; that I can remember.

Q. You never gave me the facts in the case on that day?

A. What facts?

Q. Your participation in this incident that brought about your arrest. You were the only one involved in it, isn't that correct?

A. Yes, I was.

Q. Mrs. Warren wasn't involved in that incident, isn't that correct?

Mr. Young: I object to that as incompetent, irrelevant and immaterial, not proper cross-examination. If counsel wants me to go into that incident, I submit—

(Testimony of Lou Rodgers.)

The Court: You have your redirect. Objection overruled.

By Mr. Dwight:

Q. Will you answer the question?

A. Well, as I say she did most of the talking of what happened at that time.

Q. Isn't it a fact, Miss Rodgers, that you were the one that was involved in the matter?

A. Well, even if I was, she was the one did all the talking.

Q. Please answer my question yes or no; is that correct? A. Yes.

Q. And did you not on that occasion tell me what you did on that occasion in connection with that incident?

A. I might have; I don't know. [84]

Q. You don't remember? A. No.

Q. And isn't it a fact, Miss Rodgers, that the other two girls were not involved in this particular incident that you were taken to the police station for?

A. They were taken to the police station the same time I was.

Q. They were not involved in it at all; it was you involved in the incident, isn't that fact correct? A. Yes.

Q. And you don't recall telling me the story of your participation in this incident?

A. No, I don't.

Q. You don't? A. No.

(Testimony of Lou Rodgers.)

Q. Now, was that the time that this conversation that you talk about, this alleged conversation, took place? A. What conversation?

Q. That you told Mr. Young about Mrs. Warren talking to me about barricading the house against robbers and soldiers.

A. Yes, I did not say it was that day I went up to pay my bail money; it was right afterward.

Q. Was it the day I am talking about when you gave me the facts concerning your participation in this case? A. No, it was not.

Q. Were you ever in my office any time after the 8th of June, 1936? A. Yes. [85]

Q. When?

A. I didn't say when, how many days after, but it was shortly after the arrest.

Q. Shortly after the arrest?

A. After the trial was over.

Q. I might refresh your memory. You were in my office after June 8th. A. Yes.

Q. And that was on the 11th of September, 1936? A. No.

Q. You deny that? A. I do.

Q. You were in my office on one occasion after June 8th, isn't that correct? A. Yes.

Q. And that was in September? A. No.

Q. On the 11th of September, 1936?

A. I might have paid you a visit but you weren't in.

(Testimony of Lou Rodgers.)

Q. You spoke to me on that occasion?

A. I don't recall.

Q. You don't recall. And that was the last time you were in my office, isn't that correct?

A. Well, I have been in your office but you were not in.

Q. I am only referring to instances when you came in and conferred with me; that is all. I am not talking about instances when you might have been in my office and I wasn't in.

A. I don't remember of being there.

Q. When did you leave Mrs. Warren's home?

[86]

A. Fourth of August.

Q. Fourth of August of what year?

A. 1936.

Q. Are you sure about that?

A. Well, as near as my recollection, it was.

Q. Is that just a guess? A. No.

Q. Now, Miss Rodgers, after you left Mrs. Warren, where did you go?

A. I stayed in Wahiawa.

Q. Stayed in Wahiawa. Where did you live?

A. Several places.

Q. Subsequent to leaving Mrs. Warren's home and establishing a place in Wahiawa, were you ever convicted of a crime? A. Yes.

Q. That crime was prostitution? A. Yes.

Q. Running a disorderly house? A. Yes.

Q. How many times were you convicted?

(Testimony of Lou Rodgers.)

A. Twice.

Q. Twice. You are a registered prostitute, are you not, for the police department?

Mr. Young: I object to that as incompetent, irrelevant and immaterial. Your Honor, counsel has no right to go into this matter. It has not been brought out about registered prostitutes.

Mr. Dwight: I submit the question. I submit it is proper cross-examination. [87]

The Court: Objection overruled. Answer the question.

By Mr. Dwight:

Q. Will you answer the question? A. Yes.

Q. And you are operating a house of prostitution in Wahiawa, isn't that correct? A. Yes.

Q. Now, Miss Rodgers, you testified on direct examination that this apparatus was—that you and Mrs. Warren had a conversation concerning the installation of some apparatus to protect you against robbers, drunken soldiers and police officers. Yes and no, that was your answer?

A. That was.

Q. Now, when did that conversation take place?

A. Well, first at home.

Q. When? A. I don't remember when.

Q. Can you give us some date? A. No.

Q. Was it after the time you were taken to the police station on the first or second of June?

A. It was.

(Testimony of Lou Rodgers.)

Q. Or before? A. It was after.

Q. It was after, and had you been robbed?

A. I was.

Q. On how many occasions?

A. Once in her house.

Q. Once in her house, and did you report it to the [88] police? A. Yes, sir.

Q. Did they do anything about it and catch the burglar?

A. They came up and took finger prints and didn't do anything else.

Q. They took finger prints and didn't do anything else, and that robbery took place before you had your conversation with Mrs. Warren about installation of an apparatus? A. It was.

Q. Had you been bothered by drunken soldiers?

A. Yes.

Q. On numerous occasions? A. Yes.

Q. Did the police ever assist you in quelling the disturbances?

A. The police at Wahiawa did that.

Q. Did they ever come down and put a stop to the disturbances from the drunken soldiers?

A. The MP's did.

Q. You didn't get any help, you couldn't get any help from the Wahiawa police? Please answer my question yes or no.

A. You could, if you called for them.

Q. Did you call for them? A. I did not.

Q. Did Mrs. Warren call for them?

(Testimony of Lou Rodgers.)

A. Called for the MP's.

Q. How many times have you been disturbed by [89] drunken soldiers down there?

A. Well, numerous times.

Q. Speak a little louder, please.

A. Numerous times.

Q. Numerous times. This all transpired or occurred before your conversation with Mrs. Warren?

A. Did what?

Q. The bothering of your quiet and peace by drunken soldiers occurred before you talked to Mrs. Warren?

A. About what?

Q. About the installation of equipment.

A. Yes.

Q. And up to the time that you and Mrs. Warren spoke of this installation you were the only one that was ever involved in any incident with the police, isn't that correct?

A. I don't know what you mean.

Mr. Dwight: I will ask the Reporter to read the question.

(The last question was read.)

A. During the time that I was there?

Q. Yes, during the time that you were there. Now, what did you mean, Miss Rodgers, by your answer on direct examination when counsel, when Mr. Young asked you, "And this apparatus was to keep the police out?" and your answer was, "Yes and no"? Now, what did you mean by that,—yes for you and no for Mrs. Warren?

(Testimony of Lou Rodgers.)

A. Well, it wasn't exactly meant for either one, yes and no. It was mostly for her protection, for her own building and house. It wasn't for me. [90]

Q. And you were the only one ever involved with the police?

A. I just happened to be the unfortunate one.

Q. Now, after having gone over this agreement for some time, now can you tell me when you had your first conversation with Mrs. Warren concerning the installation of electrical equipment?

A. Well, it was after June 2nd.

Q. It was after June 2nd? A. Yes.

Q. How many days? A. I don't know.

Q. Now, what did you say to Mrs. Warren and what did Mrs. Warren say to you?

A. She wanted to put the electricity on the doors. I was kidding; I told her to put iron bars on the door. She said she was going to ask Charlie Dwight, her attorney, what to do about it, if they could do anything to her.

Q. When did that conversation occur?

A. It was after the arrest. It might have been that same night; I don't remember.

Q. Did that conversation occur before or after the 8th of June or the day of your trial? It was in between the time of your arrest and the time of your trial? A. Yes.

Q. Your trial was continued?

A. To my knowledge, it was.

(Testimony of Lou Rodgers.)

Q. It was set for one day and it was continued, isn't that correct? A. It was. [91]

Q. And the only time I saw you outside of this instance that you have referred to is when I appeared in court and you were already in court when I got to the Wahiawa court? A. What.

Q. When I got to the Wahiawa court you were already there? A. Yes.

Q. You know what happened?

A. Well, you was our counsel.

Q. You had a trial down there?

A. No, not yet. It is still pending, as far as I know.

Q. You don't know that it has been dismissed?

A. I do not.

Q. You weren't tried at all down there, isn't that a fact?

A. I was down there. There was never any trial.

Q. Don't you remember there was a jury demanded in your case? A. I do not.

Q. And the prosecution dropped it?

A. I do not.

Q. You know the other girls were dismissed?

A. I do.

Q. That was the incident that I was referring to growing out of this incident of June 1st or 2nd, that case at Wahiawa? A. It was what?

Q. The case in Wahiawa arose as a result of that [92] incident of June 1st or 2nd, isn't that correct?

(Testimony of Lou Rodgers.)

A. You came out there for that same reason June 2nd.

Q. What was that again?

A. You came out there when the trial was going on June 2nd.

Q. Now, Miss Rodgers, getting back to the time that you stated that this conversation took place between Mrs. Warren and myself, what did "Speed" say? A. About what?

Q. What? A. About what?

Q. About this conversation with me that you testified to here about locking the house up.

A. Well, we went to your office and she asked you about it.

Q. What did she say about it?

A. She asked you how about wiring the building up and what they could do to her.

Q. She said how about wiring the building up?

A. And what they could do to her and you said you didn't think they could do anything.

Q. That is the whole conversation?

A. Well, that is what she came there for.

Q. Is that all that happened?

A. She said that and she said, "Well, I think we will go and do it."

Q. Did I say anything?

A. You said "Okay", that is all.

Q. When did she ask me that question?

A. Speaking offhand, I don't know what date it was.

(Testimony of Lou Rodgers.)

Q. No, no, I am not talking about the date. In [93] relation to the conversation, were you both in my office? A. I was there.

Q. Have you ever noticed when you and Mrs. Warren were in my office what the condition of the doors were? A. You have two offices there.

Q. I am talking about the doors between the two offices. A. They were shut.

Q. Have you ever been into my office with Mrs. Warren and the door was shut? A. Yes.

Q. When was that?

A. Most of the time.

Q. Now, that is all that transpired,—she said, “I think I am going to wire this place” and I said, “I don’t think they could do anything to you” and she said, “I am going to do it,” and I said, “Okay”?

A. That is all I heard.

Q. You recall testifying yesterday as to the nature of the conversation? You know what you said yesterday?

A. The same thing as I say now.

Q. Do you recall yesterday when counsel asked you as to the conversation you said that Mrs. Warren asked me about equipping the place to prevent drunken soldiers and robbers and police—you answered yes and no—from coming to the house; did Mrs. Warren make that statement?

A. Yes, sir.

Q. To me?

(Testimony of Lou Rodgers.)

A. That is what was in the conversation about the wiring. [94]

Q. That is what I want to get,—what was Mrs. Warren's conversation, what words did she use and what words did you use?

A. I used the words yesterday she wanted to wire the place up for drunken soldiers and burglars—

The Court: The Court will take a short recess.

Mr. Dwight: May we have the rest of the answer?

Q. What else was there?

A. (Continuing) —and the policemen.

The Court: Court will take a short recess.

(A brief recess was taken.)

(The last question and answer were read.)

By Mr. Dwight:

Q. And you told her that would be a good idea?

A. After you consulted her.

Q. I am speaking of your conversation.

A. A good idea of what?

Q. Your conversation when Mrs. Warren first spoke to you about the installation of equipment. You have already testified about Mrs. Warren's language. What did you say?

A. Well, I said it would be a good idea to put iron bars on the place.

Q. Did you say anything about electricity?

A. No.

(Testimony of Lou Rodgers.)

Q. You said it would be a good idea to put iron bars. Now, Miss Rodgers, did you talk to Mr. Kiehm yourself? A. When?

Q. At any time. A. No.

Q. You were present. Were you present at a conversa- [95] tion between Mrs. Warren and Kiehm? A. I don't recall.

Q. Kiehm, the man that you identified yesterday?

A. Well, I don't recall of going down there at the garage.

Q. You don't know what conversation took place between Mrs. Warren and Kiehm?

A. Well, at the house I do; yes.

Q. All right, what happened at the house? First, when did that conversation take place?

A. Well, I don't know what date.

Q. Can you give us some idea in relation to June 1st?

A. Well, it is somewhere around in a week's time that she was talking to him about it after she talked to you.

Q. It was after she talked to you?

A. Yes.

Q. And about a week's time after she talked to you? A. Yes, something like that.

Q. And when did she talk to you first? Let us get this time straightened out.

A. She was talking to me when we were in jail mostly and afterwards when we was down at your office.

(Testimony of Lou Rodgers.)

Q. That is the only time she talked to you about it, when she was in my office?

A. Well, it was after we came out of jail, when we got home.

Q. In other words, when did you get out of jail?

A. The 3rd of June.

Q. The 3rd of June and you went home?

A. Yes. [96]

Q. You didn't come to my office?

A. I don't recall of going there.

Q. Are you sure you didn't come to my office?

A. I don't remember.

Q. Well, anyway, you went home and when in relation to that time after you got home, how long after in days or hours did you have your conversation with Mrs. Warren?

A. Well, it was during the trip going home the previous day.

Q. You mean when you were in jail you talked about it? A. Yes.

Q. Were you kept in separate cells or were you kept together?

A. In one dormitory together.

Q. In one dormitory together. You had a conversation in jail; what was that conversation?

A. Mostly of the raid and how she was going to fix the house.

Q. And what did you say, what part did you take in the conversation?

(Testimony of Lou Rodgers.)

A. Same as I stated yesterday.

Q. What did you say?

A. About putting those iron bars on.

Q. And that is while you were in jail?

A. Yes.

Q. And while you were held for investigation?

A. Yes.

Q. And before anybody could talk to you, isn't that correct? [97] A. Yes.

Q. So the first conversation, as I understand it, occurred before you came to my office and while you were in jail? A. Yes.

Q. When did the second conversation occur between you and Mrs. Warren?

A. It was after we got out of jail.

Q. And that took place at Wahiawa?

A. Yes.

Q. *And that took place at Wahiawa?*

A. *Yes.*

Q. And how many days after you got out of jail?

A. I think it was a couple of days; I am not sure.

Q. A couple of days. Then how many days after that you say you came to my office and had a conversation? A. Possibly a week.

Q. Possibly a week? A. After the trial.

Q. After the trial? A. Yes.

Q. You are sure about that? A. Yes.

(Testimony of Lou Rodgers.)

Q. This conversation you say took place in my office one week after your trial?

A. I don't say it is exactly a week; it was somewhere around about a week.

Q. About a week after the trial, and when did you or Mrs. Warren speak—when did you see Kiehm?

A. About the same time; she did, not me.

Q. Well, were you present?

A. I don't remember being present. [98]

Q. You don't remember being present. You cannot testify definitely that Mrs. Warren spoke to Kiehm?

A. No, I cannot.

Q. You cannot because you didn't see them talk?

A. I don't remember of being with them.

Q. You can't tell us what the conversation was?

A. No.

Q. Mr. Kiehm, as far as you were concerned, is out of the picture; at least, you didn't hear any of the language used by Mrs. Warren or by Kiehm?

A. No.

Q. Now, when did you see Kiehm in the house?

A. Well, I don't know just when he was there but he was in there off and on. She had him do odd jobs for her.

Q. He was an electrician?

A. Mechanic and electrician, I guess.

Q. You say he had been in on several occasions doing odd jobs?

A. Yes.

(Testimony of Lou Rodgers.)

Q. When did you see him putting in this wiring?

A. After we got the sheet of metal.

Q. You were present when the metal was bought? A. I was.

Q. And when did—do you recall the date when the metal was bought? A. I can't.

Q. You have no idea? A. I can't.

Q. It was purchased from the Honolulu Iron Works? [99] A. It was.

Q. You know what month it was purchased in?

A. June.

Q. Are you sure of that?

A. To my recollection.

Q. How many days after the purchase did you see Kiehm around the house?

A. Well, I just don't remember.

Q. What is that? A. I don't remember.

Q. You don't remember that? A. No.

Q. You remember he was busy around there. You testified on direct examination he put one transformer in and by and by put another one in?

A. Yes.

Q. You were present at that time?

A. Yes.

Q. You recall one of those transformers were put in?

A. It was in June but I don't know what date.

Q. You don't know what date. You never talked to Kiehm?

(Testimony of Lou Rodgers.)

A. I did while he was around the house fixing the wire.

Q. What statements did he make?

A. Well, I just don't remember what the conversation was, mostly about the wire.

Q. You were bitten by that wire?

A. I was.

Q. You got sort of a vibration? [100]

A. I did.

Q. You tested the equipment? Answer my question yes or no. A. First?

Q. Did you test the equipment?

A. Well, I don't know what you mean.

(The last answer was read.)

Q. You understand that?

A. Yes, I tested it.

Q. You got the electricity out of it?

A. Certainly.

Q. How many times did you test it?

A. Once.

Q. You have to throw the switch?

A. You do.

Q. You say that switch was located about three or four feet off the ground and to the left of the door looking out?

Mr. Young: To the right of the door.

Mr. Dwight: To the left, looking out.

Mr. Young: It is confusing to this witness.

(Testimony of Lou Rodgers.)

By Mr. Dwight:

Q. The switch was located on the right going in?

A. As you come in the front door.

Q. And on the left as you go out?

A. Yes.

Q. And it is situated in a position about three or four feet off the ground?

A. Well, to my knowledge and measurement.

Q. Now, you made a statement, did you not, to the [101] Police Department concerning this matter?

A. When?

Q. When were you first questioned about this case? I will withdraw the last question.

A. Well, it is the same time Mrs. Warren was in jail after the electrocution.

Q. Well, you were questioned the day following and the day after that?

A. I was only down there once.

Q. And you were at Captain Hays' office?

A. I was.

Q. Were you in Captain Levi's office out at Wahiawa?

A. The only time I was there was when he sent for me.

Q. I happened to be there and you saw me there, isn't that correct?

A. I happened to be there but I did not see you.

Q. The first time that you ever gave any statement to the police authorities was subsequent to

(Testimony of Lou Rodgers.)

the death of Wah Choon Lee, isn't that correct, after that?

A. It was while Mrs. Warren was in jail. I don't know.

Q. It was after the death of Wah Choon Lee?

A. Yes.

Q. And you were questioned in the police station by Captain Hays? A. Yes.

Q. And at that time Captain Hays exhibited to you certain electrical equipment? A. Yes.

Q. And every question that he asked you was based upon that electrical equipment, wasn't it?

[102]

A. Yes.

Q. Now, that statement was reduced to writing, wasn't it? A. Yes, some of it.

Q. You remember the question Captain Hays asked you, "What has Charlie Dwight got to do with this?" A. I don't remember.

Q. You don't remember that question, like a bolt out of the blue? You remember that?

A. No, I don't.

Q. You remember telling Captain Hays that you and Mrs. Warren were in my office and that you and Mrs. Warren were leaving my office and walking through the door and out into the hall when Mrs. Warren says, "I am going to electrify that place", and I says, "Okay by me"? You remember making that statement?

(Testimony of Lou Rodgers.)

Mr. Young: I have no objection to the statement being made to the witness if it is for the purpose of impeaching this witness. If it isn't, it is incompetent, irrelevant and immaterial.

Mr. Dwight: It is for no other purpose than to impeach her. Will you answer my question?

A. I don't remember of ever saying that.

Q. You deny you made a statement to this effect, that "Speed" Warren and you were in my office?

A. If I made it to Captain Hays?

Q. To the police, a statement, they got it in writing?

A. I don't remember.

Q. And that as you and Mrs. Warren were leaving my [103] office Mrs. Warren said, "I am going to electrify the house" and I said "Okay by me" and that was the only conversation took place in my office. Do you remember making that statement to the police?

A. When?

Q. In writing, and you signed it. Don't you remember it?

A. I remember it.

Mr. Young: I submit the statement be given to the witness. The witness has a right to see that statement before a foundation can be laid for impeachment. That is the rule.

Mr. Dwight: I can ask her if she made a different statement at some other time. If she denies it—

Mr. Young: I will do you one better. I will give you the statement with the condition that you read the whole statement to the jury.

Mr. Dwight: I will ask the government to produce the statement.

Mr. Young: I will give the statement upon that condition.

Mr. Dwight: I made the motion to compel the prosecution to produce the statement.

Mr. Young: I can furnish the Court. We do not have to give our private papers.

Mr. Dwight: Counsel has come in here time and time again. He says, "I have the authorities."

Mr. Young: Counsel is making the motion. The burden is on him. [104]

Mr. Young: I will give the statement upon that condition. I will let it all be read to the jury, so that they can get the whole thing.

Mr. Dwight: I made the motion to produce. I want the ruling of the Court.

The Court: The Court will grant the motion to produce.

Mr. Young: I refuse to give the statement subject to being in contempt of Court. I believe the Territory has a right to retain the statement.

Mr. Dwight: If we are going to have any argument, I ask the jury be excused.

The Court: The jury may be excused.

(The jury left the court-room.)

The Court: This is an argument on motion to produce. The Court will set aside its decision pending the argument.

(Testimony of Lou Rodgers.)

Mr. Dwight: The law is simply this: I can ask any witness, for the purpose of impeachment, if they made a statement, an inconsistent statement at some other time.

The Court: You have now made a motion to produce.

Mr. Dwight: Yes, and the evidence discloses that such a statement exists and that statement is in the possession of the Public Prosecutor, and I have a right to compel the production of that document. It can compel it from the adversary at any time. I can call on the government at any time to produce. There is nothing [105] incompatible with the prosecution, unless they are hiding the truth.

Mr. Young: We are not entitled to what Mr. Dwight has in his file any more than he is entitled to what we have in our file. Furthermore, I have offered in good faith to your Honor to give this statement to Mr. Dwight upon condition that he take the whole statement and read it all to the jury. I am not going to have him read portions of it to the jury. If he wants my statement, he can take it all. That is the condition. I submit he has no authorities.

The Court: Have you any authorities on that?

Mr. Dwight: I have the authorities on that.

The Court: I would like to look at those authorities.

Mr. Young: I submit to your Honor's ruling at this time.

The Court: The Court would like to see the authorities on that point.

Mr. Dwight: I will get them now.

The Court: Let us have a short recess pending that.

(A brief recess was taken.)

In Chambers.

Respective counsel being present, and at the request of counsel for the defendant, the following proceedings were had:

(The reporter read as follows:)

“Q. You deny you made a statement to this [106] effect, that “Speed” Warren and you were in my office?

A. If I made it to Captain Hays?

Q. To the police, a statement, they got it in writing? A. I don't remember.

Q. And that as you and Mrs. Warren were leaving my office Mrs. Warren said, “I am going to electrify the house” and I said “Okay by me” and that the was the only conversation took place in my office. Do you remember making that statement to the police?

A. In writing?

Q. In writing, and you signed it. Don't you remember it?

A. I remember it.’’)

(Testimony of Lou Rodgers.)

In Court.

Mr. Dwight: May it please the Court, in view of the fact that the record shows that this witness, in answer to my question if she made the statement to Captain Hays to the effect that when Mrs. Warren and her were leaving my office and going out into the hall Mrs. Warren turned around and said, "I am going to electrify the house" and I said "Okay", answered that was the only statement made to the police, so I withdraw my request for the written statement.

Mr. Young: Is that true?

Mr. Dwight: We read the record. In view of the record, it is not inconsistent any more. [107]

The Court: The Court withdraws its ruling on the motion. Proceed.

By Mr. Dwight:

Q. Now, Miss Rodgers, can you explain why you made one statement to the police and another in court here today concerning that conversation?

A. Well, I only answered the questions what the officer, which if I am not mistaken was—Quinn was one—to my knowledge of what I stated yesterday and today. I tried to do the same of what I had written out.

Q. Your memory in June was much fresher than it was yesterday?

A. It was quite some time from June to now.

(Testimony of Lou Rodgers.)

Q. Have you talked to anybody in the Police Department or in the Public Prosecutor's Office between the time that you made your statement and the time that you testified here in Court?

A. I went to Mr. Young's office.

Q. Who else did you talk to?

A. That is all.

Q. Did you talk to anybody in the Police Department? A. No.

Q. Never talked to anybody. Do you recall visiting Mrs. Warren about a week ago?

A. I do.

Q. That is the first time you visited her since this incident, isn't that correct? A. No.

Q. Is that right? [108] A. No.

Q. You visited her since this death of Wah Choon Lee? A. Yes.

Q. At another time? A. Yes.

Q. When was that?

A. Right after she got out of jail.

Q. Right after she got out of jail and then you visited her again the second time last week?

A. Yes.

Q. You recall having a conversation with her?

A. Well, not that I remember of. The first time I visited her was about this, then she came down to the house last week; it was Friday.

Q. Came up what?

A. She came down to my house last Friday, that is, parked the car in front.

(Testimony of Lou Rodgers.)

Q. Last Friday. She asked you some questions and you answered them, isn't that correct?

A. Yes.

Q. Do you recall Mrs. Warren asking you if you said that you had a conversation in my office?

A. What is that?

Q. At which you were present, when electrical equipment was discussed?

A. She didn't state anything of that.

Q. She didn't state anything about that?

A. Not in my presence last week.

Q. I mean last Friday. What did she ask you? She asked you two questions. [109]

A. I don't know what it was now.

Q. You don't remember. Well, let me refresh your memory. You remember Mrs. Warren asking you what do you mean by lying about bringing Charlie Dwight into the picture?

A. I don't remember saying it.

Q. You remember your answer, "I do and I do not"?

A. I don't remember saying that.

Q. My name was not brought into the conversation on Friday? A. I don't remember.

Q. And where did this conversation take place, at Mrs. Warren's home or at your home, last Friday?

A. She drove down in front of the house.

Q. And the conversation took place in front of her house? A. In front of my house.

(Testimony of Lou Rodgers.)

Q. All right. On the first visit that you made up to Mrs. Warren's house, you went up to Mrs. Warren's house that time after the accident?

A. Yes, she met me on the street one day right after New Year's. She asked me to come up after she got moved in her new home.

Q. You went up? A. Yes.

Q. That was after New Year's this year?

A. Yes.

Q. You remember the date?

A. No, I don't.

Q. You remember any conversation that took place? [110]

A. She wished me a Happy New Year.

Q. That is all she did?

A. Well, conversation went on; it is not interesting.

Q. I see. You have posted "No Trespassing" signs? You have seen "No Trespassing" signs, haven't you, Miss Rodgers?

A. I have seen what?

Q. "No Trespassing" signs.

A. I haven't.

Q. What is that? A. I haven't.

Q. You know where the driveway is going in?

A. What driveway?

Q. Going into the yard. A. Which one?

Q. From the front side. A. Which place?

Q. Mrs. Warren's home, or, rather, her home when you lived with her.

(Testimony of Lou Rodgers.)

A. No, I didn't.

Q. Didn't notice any "No Trespassing" signs?

A. No.

Q. Didn't see any put up anywhere?

A. No.

Q. Didn't see any in the back of the lot?

A. No.

Q. Didn't see any in the front of the lot?

A. No.

Q. Did you look for any? A. No. [111]

Q. Now, this entire statement, Miss Rodgers, that you made to the police was based upon certain equipment that was in your presence and they were questioning you about it, isn't that correct?

A. Yes.

Mr. Dwight: Your witness.

Redirect Examination

By Mr. Young:

Q. Miss Rodgers, when the police had you at the police station shortly after the death of Wah Choon Lee you say they had some electrical equipment in there? A. They did.

Q. And did they ask you if that equipment was the same as was in there when you were there?

A. They asked me, yes.

Q. And that was how they got the lead?

A. Yes.

(Testimony of Lou Rodgers.)

Q. And then they questioned you about what you knew personally about that equipment?

A. They did.

Q. How you knew it was in the house and how it was put in there and all such things?

A. They did.

Q. And everything you told the police was based upon your memory and your own observation and not upon what you saw in the police station?

A. Yes, sir.

Q. Now, there has been some testimony, Miss Rodgers—I don't know whether you withdrew your privilege—you testified you are a prostitute out there? [112]

A. Well, by force, yes.

Mr. Dwight: What is the privilege? I submit she has no right to claim her privilege. She has to answer.

Mr. Young: I will withdraw the question.

Q. Now, Miss Rodgers, June 1st or 2nd, 1936, when you were present at that place, when the police came, what were you doing for Mrs. Warren?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial and as improper redirect examination.

Mr. Young: Your Honor allowed me, your Honor said I could go into it on redirect examination. I think this witness has a right to show what the whole thing was.

(Testimony of Lou Rodgers.)

Mr. Dwight: I submit it is improper redirect examination.

The Court: The Court sustains the objection as improper redirect examination.

By Mr. Young:

Q. Miss Rodgers, do you know what type of business, from your own personal knowledge, Mrs. Warren was having at her house on June 1, 1936?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial, as attempting to directly bring into the case the character and reputation of the defendant and that is not an issue in this case.

Mr. Young: If your Honor please, is the Territory supposed to let all this go in on cross-examination and not be allowed to bring it out? [113] You are making Mrs. Warren the white lily and this will be——

The Court: The Court will overrule the objection on the ground stated; the grounds of the objection will be overruled.

Mr. Dwight: May it please the Court, may I be permitted to argue that a little further?

The Court: You may state your grounds.

Mr. Dwight: My grounds are these, that it is incompetent, irrelevant and immaterial, as tending directly to bring into the record the character of the defendant.

The Court: Is that your grounds?

Mr. Dwight: That is my grounds, absolutely.

The Court: Objection will be overruled.

(Testimony of Lou Rodgers.)

Mr. Dwight: Does the Court want the universal rule on that?

The Court: The Court knows that.

Mr. Young: Will you read the question, Mr. Reporter?

(The last question was read.)

A. House of ill fame.

By Mr. Young:

Q. By that you mean——

Mr. Dwight: May I move to strike the answer upon the same ground?

The Court: You may so move. Motion denied.

Mr. Dwight: Exception.

The Court: Exception noted.

By Mr. Young:

Q. And these other girls that were there at that time, [114] were they working for her?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial, what the girls have to do with it.

The Court: Objection overruled.

Mr. Dwight: Exception.

Mr. Young: Read the question, please.

(The last question was read.)

By Mr. Young:

Q. You understand the question? A. Yes.

Q. Will you please answer?

A. House of ill fame.

(Testimony of Lou Rodgers.)

Q. The question was, do you know what the other girls were doing? A. The same thing.

Q. Now, did Mrs. Warren ever tell you the reason she went to Mr. Dwight's office?

Mr. Dwight: Objected to as improper redirect examination. He certainly should have exhausted this witness on direct.

Mr. Young: I submit the question.

Mr. Dwight: It has already been asked and answered.

The Court: The objection will be sustained. It has already been taken up on direct examination.

Mr. Dwight: You can only redirect on new matter on cross.

Mr. Young: Withdraw it.

Q. Now, you testified, Miss Rodgers, as to certain [115] interviews, times and dates with respect to going to Mr. Dwight's office. Are those exact dates or close estimates of the time?

A. Close estimates of the time.

Q. To your best recollection? A. Yes.

Q. You testified, I think on cross-examination, that you never heard Mrs. Warren speak to Mr. Kiehm about the equipment. Did Mrs. Warren ever tell you what she had told Kiehm?

A. Well, she said something about it to me first but I don't remember going down to Kiehm's office or the garage to talk about it.

Q. Did she tell you?

A. She did, when she came home.

(Testimony of Lou Rodgers.)

Q. What did she say?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial and improper redirect examination.

The Court: Objection overruled.

Mr. Dwight: Exception.

The Court: Exception noted.

By Mr. Young:

Q. What did she tell you she told Kiehm?

A. She said she was down there and told Kiehm about fixing the wires and fixing the doors.

Q. That was sometime after the raid of June 1st, is that correct? A. Yes.

Q. Sometime before you went to Mr. Dwight's office, [116] is that correct? A. Yes.

Q. Before you moved from Mrs. Warren's place? A. Yes.

Q. As to the exact date, you are not sure?

A. No.

Q. That is the sequence in the events?

A. Yes.

Q. Now, you say you tested this equipment once after it was put in, is that correct? A. Yes.

Q. How did you test it? What did you do?

A. Well, the switch was turned on and I touched my hand on the door.

Q. On what part of the door?

A. On the metal part of the door, outside.

Q. On the outside of the door? A. Yes.

(Testimony of Lou Rodgers.)

Q. You were dry at that time? A. Yes.

Q. The ground was dry? A. Yes.

Q. Were you standing in the house at the time?

A. The door was open and I walked outside, the switch was thrown and I touched the door. Of course, the door had gone to.

Q. Was that before or after Mr. Kiehm fixed the transformer?

A. Well, that was before he fixed it.

Q. In other words, you never touched it after he [117] fixed the transformer? A. Yes.

Q. The only time was before he fixed it?

A. Yes.

Q. And you did get a shock? A. Yes.

Q. Just illustrate how you touched that door with your hand.

A. Just touched it up on top (demonstrating).

Q. With your hand like that, on your finger?

A. Yes.

Mr. Young: No further questions.

Recross Examination

By Mr. Dwight:

Q. Just one more question I overlooked on cross-examination. Miss Rodgers, did you tell the police at the time you were questioned by them that it was Mr. Kiehm who put the equipment in?

A. I don't remember if I did.

Q. You don't remember?

A. Speaking or writing?

(Testimony of Lou Rodgers.)

Q. Speaking or writing.

A. I don't remember because I came out of the show—one evening going to the show, an officer asked me if I knew. I said I didn't. He asked me if it was Kiehm. I said it was the garage man. At that time I did not know his last name; all I knew him by was John.

Q. In other words, they asked you who put that electrical equipment in; you said it was John?

A. I said it was the garage man. [118]

Q. Then you said it was John? A. Yes.

Q. Do you recall everything you told the police down there or not?

A. I don't recall what I told them. I do not remember all they asked me.

Q. In other words, you don't remember your whole, complete statement? A. No.

Mr. Dwight: At this time I move to strike the testimony of this witness upon the ground that it now affirmatively appears that the evidence the government is now offering by virtue of placing this witness on the stand was obtained as the result of an illegal search and that this evidence tends to incriminate this defendant and violates her rights under the Fourth and Fifth Amendments to the Constitution. I am ready to argue the motion.

Mr. Young: Now, we object strenuously to the motion. It shows from the record the witness has testified from her memory as to what she saw. It doesn't make her testimony unlawful in this case.

She is giving everything from her own memory. I submit the motion should be denied.

Mr. Dwight: I am ready to argue the case. I ask the jury be excused.

The Court: You desire to argue it?

Mr. Dwight: I desire to argue it. It will only be a five-minute or ten-minute argument. [119]

The Court: The jury will be excused pending this argument. Mr. Dwight says it will be about five minutes. It will probably be a little longer. You are excused for at least ten minutes.

(The jury left the court-room.)

(Mr. Dwight argued in support of his motion to strike, citing 251 U. S. 385, *Silverthorne Lumber Co. vs. United States.*)

Mr. Young: I will just say a few words. I am perfectly in agreement with the law cited by counsel, if it were applicable, but it is not. This is a case of homicide. We are going to prove it was electrocution by the people on the outside. (Argument.) I submit the motion to your Honor.

The Court: The Court is ready to rule. This evidence, which Mr. Dwight asked to be stricken and excluded upon the ground that it is an invasion of the defendant's constitutional rights under the Fourth and Fifth Amendments, in that, as he argues, the evidence is based upon the evidence seized and the illegal search and seizure, is denied. The Supreme Court of the United States has stated in the *Silverthorne* case that evidence, although

seized in violation of the Fourth and Fifth Amendments and ordered suppressed, still that evidence is not sacred nor inaccessible. The testimony of this witness shows throughout her direct and cross-examination the evidence is based upon her memory at the time [120] she lived in that house, saw the equipment being installed and had an opportunity to see it, test it and describe it. Although she did make the statement in answer to Mr. Dwight that the entire statement made to the police was based on the equipment there in her presence, she also made the statement on redirect, in answer to Mr. Young, that her testimony here in this Court was based upon her memory at the time she lived there. Certainly the Court, under the authority in the Silverthorne case, denies the motion.

Mr. Dwight: May I save an exception?

The Court: Exception may be noted. Mr. Young, have you any witnesses?

Mr. Dwight: I think the Court might rule on my motion, so that I may save my exception, in the presence of the jury.

Mr. Young: That is the proper procedure.

The Court: Call the jury.

(The jury returned to the court-room and jury box.)

The Court: Stipulate the jury is present. Mr. Clark, Reporter, will you read the Court's ruling on Mr. Dwight's motion?

(The reporter read as follows:)

“The Court: The Court is ready to rule. This evidence, which Mr. Dwight asked to be stricken and excluded upon the ground that it is an invasion of the defendant’s constitutional rights under the Fourth and Fifth Amendments, in [121] that, as he argues, the evidence is based upon the evidence seized and the illegal search and seizure, is denied. The Supreme Court of the United States has stated in the Silverthorne case that evidence, although seized in violation of the Fourth and Fifth Amendments and ordered suppressed, still that evidence is not sacred nor inaccessible. The testimony of this witness shows throughout her direct and cross-examination the evidence is based upon her memory at the time she lived in that house, saw the equipment being installed and had an opportunity to see it, test it and describe it. Although she did make the statement in answer to Mr. Dwight that the entire statement made to the police was based on the equipment there in her presence, she also made the statement on redirect, in answer to Mr. Young, that her testimony here in this Court was based upon her memory at the time she lived there. Certainly the Court, under the authority in the Silverthorne case, denies the motion.”

Mr. Dwight: May I save an exception?

The Court: You may.

Mr. Dwight: May I object to the testimony of this witness upon the same grounds?

The Court: You may.

Mr. Dwight: May my objection and exception run through this entire testimony?

The Court: The objection is overruled and the exception is noted. [122]

Mr. Dwight: May I save an exception to the overruling of my motion to strike?

The Court: Yes, and the record may so show.

JOHN KIEHM,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name? A. John Kiehm.

Mr. Young: Mr. Kiehm, speak a little louder and face the jury.

Q. Where do you live? A. At Wahiawa.

Q. How do you spell your name?

A. K-i-e-h-m, Kiehm.

Q. And it is pronounced "Keem"?

A. Yes.

Q. Like "Keem"?

A. Yes.

Q. What is your occupation?

A. Mechanic, auto mechanic.

(Testimony of John Kiehm.)

Q. How long have you been an automobile mechanic? A. Ever since 1924.

Q. Where have you been working at that trade?

A. I have been working here on the Island of Oahu and over at Lanai.

Q. More particularly on the Island of Oahu, at what place? [123] A. At Wahiawa.

Q. And who did you work for at Wahiawa?

A. I worked for Castner Garage and I left there in 1929 or 1930, then I had my own business for about a couple of years. Then the business was formed into a corporation and later it was dissolved, then I worked—

Q. We won't go into the organization of that company. Who were you working for in 1936 about between the months of, say, June and September?

A. I was working for Driveway Garage.

Q. You were working for Driveway Garage?

A. Yes, Wahiawa.

Q. Do you know a person by the name of Ilene Warren, "Speed" Warren? A. Yes.

Q. Will you indicate?

A. There (indicating the defendant).

The Court: Let the record so show.

By Mr. Young:

Q. Do you know where she was living?

A. She was living in Wahiawa.

Q. At what place in Wahiawa?

(Testimony of John Kiehm.)

A. It was two blocks above the court house—
one block above the court house and two blocks
beyond.

Q. Would you know that house if you saw a pic-
ture of it? A. I think I do.

Mr. Young: (To the Clerk) May I see the
pictures?

The Court: "D", "E", "F" and "G". [124]

By Mr. Young:

Q. Mr. Kiehm, I show you Prosecution's Ex-
hibit "G" in evidence. Will you examine that,
please?

(Mr. Young handed the picture to the witness.)

A. Yes, sir.

Q. Is that a picture of "Speed" Warren's
house? A. (Examining the picture) Yes, it is.

Q. And also I show you Prosecution's Exhibits
"D", "E" and "F" in evidence.

(Mr. Young handed the pictures to the witness.)

Mr. Dwight: Are those in evidence?

Mr. Young: Yes, they are in evidence.

A. (Examining the pictures) Yes, that is her
house.

Q. Is that a picture of "Speed" Warren's house
as you knew it? A. Yes.

Q. At the time, in 1936? A. Yes.

Q. Between the months of June and Septem-
ber? A. Yes.

Mr. Young: Now, if you will step down to this
plat just a moment, Mr. Kiehm. May this Ex-

(Testimony of John Kiehm.)

hibit "I" be introduced in evidence at this time to illustrate the testimony of Lou Rodgers? It was marked for identification. I offer it in evidence.

Mr. Dwight: I object to it as incompetent, irrelevant and immaterial, no proper foundation being shown for its admission; that it is not a fair representation of the witness' testimony. [125]

The Court: That is for the jury to decide. It may be admitted as Exhibit "I".

(The diagram referred to, having previously been marked "Prosecution's Exhibit I for identification," was received in evidence and marked "Prosecution's Exhibit I.")

By Mr. Young:

Q. Now, I am going to explain this briefly to you, Prosecution's Exhibit "A" in evidence, as you can see from the writing. This is Muliwai Street (indicating); Kuahiwi Avenue (indicating); this is the railroad down here (indicating). Do you believe you can point out approximately the place where "Speed" Warren lived with reference to this diagram?

Mr. Dwight: Well, it is on the map with her name on it.

Mr. Young: He does not know her name. If you want him to point to it.

A. (Indicating on Exhibit "A") here.

By Mr. Young:

Q. This is the place here (indicating). That is the location with regard to Muliwai Avenue (indicating).

(Testimony of John Kiehm.)

A. The house faces the front of the street; I am not sure.

Q. Is it on the street that goes past the court house?
A. One street above.

Q. That is the house portrayed in these pictures that you have seen?
A. Yes.

Mr. Young: May the record show the identifica-[126] tion on this plan of the lot marked "Marvin Connell", being the same as portrayed in the pictures?

The Court: Let the record show that.

By Mr. Young:

Q. How long have you known "Speed" Warren?

A. I have known her since 1930, 1929 or 1930.

Q. 1929 or 1930?
A. Yes.

Q. While you were working for the Driveway Garage, did you ever do any work for her?

A. I did.

Q. Will you please tell the jury just what the nature of that work was and when you did it?

Mr. Dwight: Let us get the time first.

By Mr. Young:

Q. When did you do this work for her?

A. I have done a lot of work for Mrs. Warren on her car, but pertaining to what work?

Q. Did you ever do any work on her house of any kind whatsoever?
A. I have, once.

Q. When did you do that?

(Testimony of John Kiehm.)

A. Sometime in July, 1936.

Q. July 1936? A. Yes.

Q. Are you sure? Do you know the date, the number? A. Yes, it was July 11th.

Q. July 11th? A. July 11th. [127]

Q. Why are you so sure of that date?

A. Because I had the receipt; I had the bill for the job done.

Q. What is the date on the bill?

A. July 11th.

Q. Did she charge that or did she pay you that right after you did the work?

A. It was charged and she paid it on the 14th.

Q. The work was done on the 11th. Now, will you tell the jury just what you did on this house portrayed by the pictures? Tell what your conversation was with Mrs. Warren.

A. Mrs. Ilene Warren came over the garage and asked me if I could install some device, which I could install in the house so the doors would be shocked when the door is opened. I said, "Yes, it could be done." Later on I purchased a transformer from the Service Motors and went over the house and had the transformer installed, and there was one wire leading to the front and one to the back. The main wire was leading to a switch on the door panel.

Q. Did you put the switch in?

A. I don't recall.

(Testimony of John Kiehm.)

Q. But you did connect the wires to the switch?

A. Yes.

Q. Did you? A. Yes.

Q. Where? What wire did you connect to the switch? Where did that wire come from? Where was it connected, the source? [128]

A. The wire came from the fuse plug.

Q. Was that the fuse plug that comes from the ordinary lines? A. Yes.

Q. Leading from the poles outside?

A. No, the fuse plug was in there already.

Q. Was that the regular source of electricity in the house?

A. Not on the regular outside fuse plug; it was an inside fuse plug.

Q. I mean that was being fed by the pole outside. She did not have any electric plant in the house? A. That came from the outside pole.

Q. You ran the wires from the switch to the transformer? A. Yes.

Q. Where was the transformer located?

A. Located above the living-room door.

Q. Did you put that transformer in?

A. I did.

Q. What kind of a transformer?

A. Radio transformer.

Q. What kind of a radio transformer?

A. It may have been Philco or Majestic.

Q. Do you know whether or not, of your own knowledge, it was a radio transformer?

(Testimony of John Kiehm.)

A. I was told it was a radio transformer.

Mr. Dwight: I move it be stricken.

Mr. Young: It may be stricken.

The Court: It will be stricken as to what [129] he was told. The jury will disregard it.

Q. Where did the wires lead from the transformer?

A. One led to the front door, one to the back door, one to the ground.

Q. When you say "to the ground", what do you mean?

A. By putting a pipe into the ground and having a wire lead up the pipe.

Q. Where was the "ground" located with reference to the house?

A. On the side leading up to the kitchen stairs.

Q. That is the side on the front of the house?

A. On the front of the house (indicating on picture).

Q. Hold it towards the jury (referring to picture). Out there (indicating). One of those pictures shows where the ground was?

A. It doesn't show in the picture. The ground was somewhere along here (indicating on picture).

Mr. Young: That is referring to Prosecution's Exhibit "G" in evidence.

Mr. Dwight: Mark the spot where it was.

Mr. Young: May I put an "X" there, Mr. Dwight, on the spot?

Mr. Dwight: Yes.

(Mr. Young puts an "X" on Exhibit "G".)

(Testimony of John Kiehm.)

By the Court:

Q. I will ask the witness is that "X" put correctly? A. Yes.

By Mr. Young:

Q. Is that "X" where it should be?

A. Somewheres around here (indicating on Exhibit "G".) [130]

Q. You got the "X" in the right place?

A. Yes.

Q. And that is where the ground was connected?

A. Yes.

Q. Now, did you do all this wiring yourself?

A. Yes, I did.

Q. Was there anyone else helping you, to your knowledge or recollection?

A. I may have had a helper.

Q. You are not sure of that?

A. I am not positive.

Q. Now, do you know this lady that identified you, Lou Rodgers? A. Yes.

Q. Do you know her? A. I do.

Q. Did you at any time see her at that house while you were putting that equipment in, that you recall?

A. She may have been there and she may not; I don't know.

Q. You could not say one way or the other?

A. I am not positive.

(Testimony of John Kiehm.)

Q. Do you know of your own knowledge whether or not she was staying at that house at that time? A. I think she was.

Mr. Dwight: I am going to move the answer be stricken. If he has any definite information, he could testify about it.

By Mr. Young:

Q. Do you know of your own knowledge or are you just [131] guessing?

A. She was staying there on and off. She may have been living there at the time, she may not; I don't know. I am not sure.

Q. You are not sure? A. I am not sure.

Q. Now, did you tell "Speed" how to operate this?

Mr. Dwight: I object to it as leading.

Mr. Young: Withdraw the question.

Q. Did you have any conversation with "Speed" Warren as to this equipment after you put it in the house? A. I did.

Q. What was the nature of that conversation?

A. It was concerning the wiring and as to how to operate it.

Q. What was the conversation?

A. She asked me, "By throwing the switch on, will the electrical charge go in the door". I said "Yes."

Q. And are you an electrician by trade?

A. I am an auto electrician.

(Testimony of John Kiehm.)

Q. You are an auto electrician? A. Yes.

Q. Have you ever wired a house before?

A. No.

Q. Have you ever studied electricity?

A. I did.

Q. What kind of study?

A. Home course, Wick's Electrical Course.

Q. This was the first time you attempted to wire a house? [132] A. Yes.

Q. Have you ever connected a transformer of any kind to any building before? A. No.

Q. I understand most of your electrical work is in connection with automobiles?

A. Automobiles, yes.

Q. Goes along with that position as mechanic?

A. Yes.

Q. Do you know of your own knowledge what this transformer would do to this current?

A. My own knowledge, I knew that thing would give a shock to a person.

Q. Do you know what it would do with relation to the strength of the current?

A. I was told it would produce about 650 volts.

Mr. Dwight: Never mind what you were told. Move to strike that answer.

The Court: It may be stricken and the jury instructed to disregard it.

Mr. Young: Just tell what you know of your own knowledge.

(Testimony of John Kiehm.)

Q. Do you know of your own knowledge what that transformer would do to the electric current going through it? A. No.

Q. You did not have any way of knowing it?

A. No, no way.

Q. When you connected it up the way you did, you did not know what the effect would be?

A. I knew it would give a shock. [133]

Q. You did not know how strong the shock would be or what the current would be that was passing through it? A. No.

Q. Now, after that was once installed, did you ever go back there and do anything else?

A. On the same wiring?

Q. Same place. A. No.

Q. Did you do anything—Withdraw that question. How many times were you to the Warren place in regard to this particular shocking device?

A. One time.

Q. Did you go to fix it, anything like that, after it was once put in? A. I don't recall.

Q. You don't know whether you did or not?

A. I don't know.

Q. Were you ever requested by "Speed" Warren to come up and fix it?

Mr. Dwight: Objected to as leading.

Mr. Young: I have exhausted the witness.

The Court: Objection overruled.

Mr. Dwight: Exception.

The Court: Exception noted.

(Testimony of John Kiehm.)

By Mr. Young:

Q. Did she ever request you to come up and fix it or do anything to it after you once put it in?

A. I don't think she did.

Q. Are you positive? A. I am not. [134]

Q. She may and she may not have?

A. I can't recall.

Q. You can't recall? A. I can't recall.

Q. Did you get any of the other equipment that you put in that house?

A. I got the wires at the garage.

Q. You got the wires at the garage? A. Yes.

Q. When you connected the wires to the door, what did the door look like? Can you describe it from memory?

A. It was a screen door and had a plate in front.

Q. What kind of a plate?

A. I am not positive what it was.

Q. How big was the plate, how large?

A. I would say about one-third the size of the ordinary screen door.

Q. About one-third the size of the ordinary screen door?

A. About one-third the size of the ordinary screen door.

Q. That was on the front of the door?

A. That was on the front of the door.

Q. How did you attach the wire to the door?

A. That was soldered onto the screen.

(Testimony of John Kiehm.)

Q. That made contact with the plate?

A. It did.

Q. Did you have anything to do with the purchasing of that plate? A. No.

Q. Was that on the door when you came there?

[135]

A. I remember seeing a plate on the door.

Q. You can't remember whether you put it on or not?

A. I can say there was a plate on the door; that plate, I didn't put on.

Q. In other words, you didn't put the plate on that was there when you came there? A. No.

Mr. Young: Pardon me just a moment, your Honor.

By the Court:

Q. May I ask a question? What material is that plate made out of?

A. I don't know whether it was galvanized or copper sheet.

Q. Galvanized what?

A. Galvanized iron or copper sheet.

By Mr. Young:

Q. Mr. Kiehm, are you acquainted with—Withdraw that question. How many times have you been in "Speed" Warren's place?

A. I have been there a number of times doing repairs to her stove.

Q. You repaired her stove once?

(Testimony of John Kiehm.)

A. Yes, several times.

Q. You remember the plan, the location, through being in there?

A. I know just the bottom floor, not all.

Q. What part of the bottom floor are you acquainted with? A. Just the living-room. [136]

Q. How about the front door?

A. And the front door.

Q. Do you remember whether or not there was any stairs on the bottom floor?

A. Two stairs, one leading upstairs and one to the kitchen.

Q. Where was the bottom of this stairs with reference to the entrance of the house?

A. As you enter, the stairs to the kitchen lead straight ahead.

Q. Approximately how far was it from the door as you entered the front door and stopped at the door sill, approximately how far was it to the first steps going up on the right?

A. Just about a step.

Q. Just about a step. Can you give us some idea by indicating some object in front of you?

A. Over there to about here (indicating).

Q. Where?

A. Say about here to here (indicating).

Mr. Dwight: About 2½ feet.

Mr. Young: About 2½ feet.

The Court: It is stipulated 2½ feet is indicated.

(Testimony of John Kiehm.)

By Mr. Young:

Q. Now, that is where the first steps started on the stairs going upstairs? A. To the parlor.

Q. That is the parlor upstairs you are talking about, two parlors? [137]

A. Two parlors, downstairs and upstairs.

Q. Now, when you say "parlor", you are talking about the one upstairs?

A. The one upstairs.

Q. With reference to that entrance, can you tell us where this switch was that you connected these wires to?

A. The switch was right on the door post that leads up to the parlor.

Q. On the door post? A. Yes.

Q. What door post?

A. As you enter the house and going upstairs.

Mr. Young: I think we better have a diagram of that. It is five minutes to twelve. It will take a little while. I suggest we continue the case.

Mr. Dwight: I have no objection, if it is for the convenience of counsel. I have no objection to taking an adjournment at this time.

The Court: We will adjourn until nine o'clock Monday morning.

Mr. Young: May we, before the jury is dismissed, summon the witnesses to return Monday morning?

Mr. Dwight: While we are on that, I have been looking at the record to find out if certain sub-

(Testimony of John Kiehm.)

poenas have been served. They don't seem to appear.

Mr. Young: (Naming witnesses standing in the court-room) Lucy McGuire, Florence Billie Penland, Edward Burns, Sergeant Wm. Odle, Sergeant Charles W. Erpelding. Will your Honor please instruct these [138] witnesses to return Monday morning at nine o'clock?

The Court: All you witnesses will report Monday morning at nine o'clock without further order by the Court.

Gentlemen of the Jury, you are under the same instructions I gave you the last time not to discuss this case with any outsider whatsoever. If anyone attempts to approach you in an improper way, report it to the Court.

Mr. Young: I believe we better include the present witness on the stand.

The Court: Mr. Kiehm, you are also included in the order. Court will adjourn until Monday morning at nine o'clock.

(A recess was taken until Monday, February 7, 1938, at nine o'clock a. m.) [139]

Honolulu, T. H., Feb. 7, 1938.

(The trial was resumed at 9 o'clock a. m.)

The Clerk: Criminal 14332 Territory of Hawaii vs. Ilene Warren alias "Speed" Warren, for further trial.

Mr. Young: Ready for the Territory.

Mr. Dwight: Ready for the defendant.

Mr. Young: Stipulate the jury and the defendant are present.

The Court: Let the record so show. Proceed with the trial.

JOHN KIEHM,

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Young:

Q. Mr. Kiehm, will you please stand right there? (Indicating position by the blackboard.)

The Court: Mr. Kiehm is under oath. Continue with the direction examination.

By Mr. Young:

Q. Using this ruler, will you please draw from your memory the floor plan of the house, as you know it, what part of that house you know from your memory, that is, the house of "Speed" Warren that you have testified to?

(Mr. Young handed the witness a ruler and pencil. The witness draws on a sheet of paper tacked to the blackboard.)

Q. Using the top of the board, Mr. Kiehm, to the *the* street that the front door faces, that is, the front door faces that way, Muliwai Street will be on [140] the top of the board.

(Testimony of John Kiehm.)

A. (Drawing further) That is the plan of the house I do know as Speed Warren's house.

Q. Will you step over on this side now, Mr. Kiehm. Where is the front door located in that house? Will you draw that?

Mr. Dwight: May the record show I object to this line of testimony upon the same grounds stated in my objection to the testimony of the other witness?

The Court: The record may so show.

By Mr. Young:

Q. Have you an "F" there? A. Yes.

Q. Will you put a line indicating where the door is? A. (Drawing).

Q. Now, which side is Muliwai Street?

A. Muliwai Street (writing).

Q. You want to refer to this diagram?

A. Muliwai is here (indicating).

Q. Is that Muliwai up here (indicating)?

A. Yes.

Q. Now, as you enter the front door, where was the stairs with reference to this diagram?

A. As you go in, this is the stairs leading to the parlor (indicating).

Q. Leading upstairs? A. Upstairs.

Q. And are these on your right or on your left as you come in the door? [141]

A. Going up on the right.

(Testimony of John Kiehm.)

Q. That is the way you have it here (referring to diagram); as you come in this way, which way would that stairs be?

A. (The witness draws.) On this side.

Mr. Dwight: Q. In other words, to save time, Muliwai Street is on this side (indicating)?

A. Yes.

By Mr. Young:

Q. Muliwai Street is on this side, going this way (indicating)?

A. The stairs going up.

Q. You want to change the position of that "F" then?

A. Yes.

Q. Now, as you come in the front door, you say that the stairs going upstairs to the parlor are on the right?

A. On the right, yes.

Q. That is these stairs here (indicating)?

A. Yes.

Q. Will you mark that going to the parlor and the other stairs go right straight ahead and go up to the kitchen?

A. Yes (marking).

Q. You have been up to that kitchen to fix the stove, I believe you testified?

A. Yes.

Q. Now, Mr. Kiehm, I want you to mark on that plan the place where the switch was located.

Mr. Dwight: I object as leading. He certainly is not going to put testimony into this witness' mouth.

[142]

The Court: Will you read the last question?

The Reporter: I didn't get the last part of the question.

(Testimony of John Kiehm.)

By Mr. Young:

Q. Mr. Kiehm, will you please place an "X" at the point where this switch was located that you testified about, the place where this switch was located with reference to the stairs?

A. (The witness marks.)

Mr. Young: Let the record show that the witness marks the spot with an "X" at about the third step, the third line.

Q. Those lines indicate the steps in the rough diagram? A. Yes.

Q. I believe you testified Friday that the switch was 2½ to 3 feet from the front door, is that correct? A. Yes.

Q. That would be from point "X" to the front door would represent about three feet?

(The witness did not answer audibly.)

Mr. Young: Mr. Kiehm, please speak louder.

The gentlemen of the jury have to hear you and the Court. Just speak a little louder.

Q. Do I understand, Mr. Kiehm, your testimony is from the front door as you come in the switch is located 2½ to 3 feet from the door on the right-hand side? That is correct? A. Yes.

Q. Approximately how far from the bottom of the steps, [143] going up vertically, is the switch located, to your best recollection?

A. I would say about four feet.

Q. About four feet. Now, will you please tell us what this square represents?

(Testimony of John Kiehm.)

A. That square is the lower parlor.

Q. That square is the lower parlor. Will you tell us where you put this transformer? Will you mark a "T" where you installed the transformer?

A. Above this door (indicating on diagram and marking).

Q. Above what door?

A. Above the door that leads into the parlor.

Q. What else was at that point where you put the transformer? A. There was a fuse plug.

Q. Anything else?

A. Yes, there was a small Bell transformer.

Q. Now, where is the back door in that house located, do you know? Is this the only part of the house that you are familiar with? A. Yes.

Q. You are not familiar with any of the other parts of the house.

A. That door is somewhere around here (indicating).

Q. Now, will you please draw—let me have the crayons—with this red pencil the way that the wires—you testified you hooked the wires up to the front door and the back door. Just trace the wires the way you put them in, just roughly.

A. On this diagram?

Q. Yes, just the course of the wires. [144]

A. One wire led to the transformer.

Q. Just mark that.

A. One at the back and one going to the ground (tracing with pencil). Just about here the two wires

(Testimony of John Kiehm.)

met a switch (indicating) and back again to the transformer.

Q. Now, over on this side of the board, Mr. Kiehm, *will just* draw a little larger diagram of how the wires, roughly, were situated, that is, draw the circuit, if you can. Mark the fuse plug, the transformer and the switch. Show how the circuit was connected.

The Court: Use a darker pencil. I believe you will see better.

By Mr. Young:

Q. Use this darker pencil. Thank you, your Honor. A. (The witness draws on paper.)

Q. Now, you have the circuit starting at the fuse plug? A. That is right.

Q. That was connected with the outside line?

Mr. Dwight: Objected to unless he knows definitely.

By Mr. Young:

Q. Do you know from your own knowledge?

A. I knew this was the same line that came in.

Mr. Dwight: I object to the question as incompetent, irrelevant and immaterial.

Mr. Young: I submit to your Honor's ruling.

The Court: Objection overruled.

Mr. Dwight: Save an exception.

The Court: Exception noted. [145]

The Court: Will you trace that red in black? It is not visible at all. Trace over your red with black on that diagram.

(Testimony of John Kiehm.)

A. (The witness retraces the red lines in black.)

By Mr. Young:

Q. You have the circuit starting at the fuse here, is that correct (indicating)? A. Yes.

Q. From there you have two wires going to the switch? A. Yes.

Q. What kind of a switch was that?

A. Double-throw knife switch.

Q. Knife switch, double-throw? A. Yes.

Q. You have two wires going to the transformer? A. Yes.

Q. Could you draw approximately the size of that transformer?

Mr. Dwight: May it please the Court, may I renew my objection? The further objection, that this witness is to reproduce evidence by an actual drawing of what this Court has suppressed. I object as incompetent, irrelevant and immaterial.

The Court: The objection will be overruled. There was no showing but what this was entirely independent of any illegal search and seizure.

Mr. Dwight: Exception.

The Court: Exception noted.

By Mr. Young:

Q. From your memory of that transformer that you put [146] in there, will you draw the approximate size of it to life scale?

A. (The witness draws.)

(Testimony of John Kiehm.)

Q. Now, this square or rectangle you have here, what side of the transformer does that represent, looking at it from the large side?

A. Looking straight ahead at the transformer.

Q. What would be the other dimension? Draw it from the other view.

A. (The witness draws on paper.) This is from the side.

Q. From your recollection.

Mr. Dwight: Will the witness mark "side view" and "front view" and "top view"?

The Court: And label what the object is itself.

A. Transformer.

Mr. Dwight: Write it in.

By Mr. Young:

Q. Now, from your recollection of the measurement of that, could you give us the inches wide and long and thick?

A. I should say it is about 4½ inches wide by 6 inches long; about two or three inches thick.

Q. Now, after the wires went to the transformer, you have some lines going out here (indicating). Will you explain what they are, please? Step over here so the jury can see.

The Court: Talk loudly.

A. This line goes to the ground (indicating).

Q. And that is attached to this place that you marked on the diagram the other day outside up over where you put this point "X"? [147]

A. Yes.

(Testimony of John Kiehm.)

The Court: On what exhibit?

Mr. Young: "G", your Honor.

Q. That is a pipe out in front of the house, is that correct?

A. Yes, and one leads to the front, a splice there (indicating), and another line runs to the back.

Q. When you say "front door" you mean the door there on the other diagram? A. Yes.

Q. And this transformer that you testified to was located above the door?

Mr. Dwight: Let the witness locate it, Mr. Young.

By Mr. Young:

Q. You locate it.

A. This transformer was right above the door. This wire leads to this front door and that wire leads to the back door and the ground on the side of the house (indicating on diagram.)

Q. Will you take the stand? Mr. Kiehm, looking at these exhibits or pictures of the house on the board, can you show us by any of those pictures where the front door is located that you testified to on this diagram?

A. This is the front door (indicating on picture.)

Q. Pointing to Exhibit "D" in evidence. That is the front door? A. Yes.

Q. Pointing to that picture, on which side is the stairs going up on the inside? [148]

A. This side going up (indicating).

(Testimony of John Kiehm.)

Q. Indicating the right side of the picture. The stairs that go to the kitchen, where do they go?

A. Right here (indicating).

Q. Now, just how did you attach these wires to the front door, Mr. Kiehm?

Mr. Dwight: Objected to as already having been asked and answered.

The Court: Objection overruled.

Mr. Dwight: Exception.

The Court: Exception noted.

A. The wire was soldered onto the front screen.

By Mr. Young:

Q. How did it approach the screen, from which side of the door?

A. The inside is on the right upper corner.

Q. The right upper corner?

A. That is inside the house.

Q. Looking over into the house? A. Yes.

Q. May I put it this way: Was it on the side where the hinges are on the door?

A. About an inch above the hinge.

Q. About an inch above which hinge?

A. The upper hinge.

Q. That is where the wires cross from the wall to the door?

A. That is where the wires cross from the wall to the door.

Mr. Young: Excuse me just a moment, your Honor. Your witness. [149]

(Testimony of John Kiehm.)

Cross Examination

By Mr. Dwight:

Q. Mr. Kiehm, have you talked to anybody about your statement that you were to give in Court? A. I have, to Mr. Young.

Q. You have, to Mr. Young. When did you talk to Mr. Young?

A. I believe it was two weeks ago.

Q. Two weeks ago? A. Yes.

Q. And you had only one conversation with him? A. I had one at his office.

Q. Only once at his office?

A. At his office, yes.

Q. Did you talk to him at any other time?

A. I did, outside at the hallway.

Q. Did you make any other statement to anybody? A. Not that I know of.

Q. Didn't you make a statement to the police?

Mr. Young: If your Honor please, counsel is laying a foundation for impeachment. I submit the foundation isn't being laid. He must call attention to inconsistent statements.

The Court: It is proper cross-examination, going to his credibility. Objection overruled.

A. Yes, I did, to the police.

By Mr. Dwight:

Q. When did you make a statement to the police?

A. I believe sometime last year; sometime in last year.

(Testimony of John Kiehm.)

Q. In relation to the time that this police officer was killed, was it before or after the police officer was [150] killed? A. It was after.

Q. It was after the police officer was killed?

A. Yes.

Q. Now, Mr. Kiehm, did you sign a statement at the police station when you made this statement?

A. I did.

Q. That was the first statement you made concerning this particular incident?

A. That is right.

Q. And at the time that that statement was made, did they show you certain electrical equipment at the police station? A. Yes.

Q. That consisted of a transformer?

A. Yes.

Q. That consisted of some wires? A. Yes.

Q. And that consisted also of a switch?

A. Yes.

Q. And they were the same articles that you testified here on direct examination that you put into the house? A. Yes.

Q. Now, Mr. Kiehm, what was the conversation that you had with Mrs. Warren concerning this installation?

A. That was in 1936. She drove up the shop with Lou Rodgers and she asked me if I could install some kind of a device in the front door to keep away soldiers.

(Testimony of John Kiehm.)

Q. If you could install a device on her front door to keep away soldiers—Go ahead. [151]

A. Because they come there at all hours of the night, pounding at the door.

Q. Yes.

A. So I told her that a transformer would give a shock. She asked me if I could have it installed.

Q. You told her the installation of a transformer and some wires would give them a shock?

A. Yes.

Q. Did she ask you if you would guarantee that it would not kill or did you tell her that it would not kill?

A. I remember telling her that the shock in the front door wasn't strong enough to harm a person.

Q. You told her that the shock in the front door wasn't strong enough to harm a person?

A. Yes.

Q. And then she asked you to install it, is that correct? A. Yes.

Q. And did you not tell the police in your statement that you made that that equipment could not kill? A. Yes, I did.

Q. And did you tell them that if the equipment were put up, you would prove to them that it could not kill? A. Yes.

Q. And when you first had your conversation with Mrs. Warren, Mr. Kiehm, you told her that you could put in an apparatus that would not harm anybody? A. Yes.

(Testimony of John Kiehm.)

Q. And that was the apparatus that you were referring [152] to, the apparatus that you testified here about? A. That is right.

Mr. Dwight: Your witness, Mr. Young.

Redirect Examination

By Mr. Young:

Q. Mr. Kiehm, everything you have testified to here this morning is from your own memory of what happened?

A. Yes, from my own memory.

Q. And what you put in the house? A. Yes.

Q. And that was not influenced in any way by what the police told you? A. No.

Mr. Young: May I be permitted—

The Court: Are you going to introduce this as an exhibit?

Mr. Young: Yes, your Honor.

Recross Examination

By Mr. Dwight:

Q. (To Mr. Young) Are you through? (No response.)

Mr. Kiehm, you testified on cross-examination that the police showed you this equipment?

A. Yes.

Q. And asked you what you knew about it, isn't that correct? A. Yes.

Q. And then you started to tell them your story; isn't that what happened? [153]

(Testimony of John Kiehm.)

Q. Did they offer any immunity, if you told them your story, that you would not be prosecution for murder? Did they tell you that if you could tie up Mrs. Warren, that you would not be prosecuted? Did they give you that assurance?

A. All Captain Hays told me was this: "We are trying to get at the truth."

Q. What else?

A. And the exact words he said I have forgotten.

Q. Did he tell you that you wouldn't have to be worried; that you wouldn't be pinched or prosecuted, if you told your story?

A. He said something like if I told the truth, that I would be all right, I think it was.

Q. You would be all right; he gave you that assurance? A. I think he did.

Q. Then you started to tell your story?

A. Yes.

Mr. Dwight: That is all.

Mr. Young: No further questions. May this be received in evidence as Prosecution's Exhibit "J"?

Mr. Dwight: Subject to my general objection, and my further objection that this is a reproduction—I refer to this section of the sketch of the wires, the fuse, the switch, the transformer, the ground, the front view of the transformer, the side view of the transformer, are actual reproductions of evidence that this Court ordered suppressed, or copies. Has the Court ruled on it? [154]

The Court: The objection will be overruled.

Mr. Dwight: May the Court reserve the ruling because I want to submit authorities?

The Court: The Court will enter this as Exhibit "J" in evidence and reserve the ruling for further authorities, which counsel may wish to present at a later time.

Mr. Dwight: At this time I move to strike the testimony of this witness on the ground it is incompetent, irrelevant and immaterial; that it is based upon information procured during an invalid search and that this testimony tends to incriminate the defendant under the Fifth Amendment and was obtained in violation of the defendant's rights under the Fourth Amendment, and also on the further ground that the testimony was procured in violation of law and I would like to argue the matter—I will be very brief—in the absence of the jury.

The Court: What authorities have you?

Mr. Dwight: I have the wire-tapping case where Justice Brandeis goes to the——

The Court: The jury will be excused during this argument and will be called when completed.

(The jury retired from the court-room.)

The Court: I think we better take this up in chambers.

Mr. Dwight: No, I think the proper method would be to have the argument in court. [155]

Mr. Dwight: I only desire to cite three cases. The first one is very brief. Since the Silverthorne

Lumber Company decision the first case I desire to cite is that of *Agnello vs. United States*. I quote from the *Agnello* decision and I quote from page 150 U. S. Law Ed., page 148. Apparently I will be reading from your copy of the Supreme Court Decisions around page 23 or 24. I quote this: (Reading)

“The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all.”

Now, Justice Brandeis in the wire-tapping case goes into the *Silverthorne* case rather thoroughly and I read what he has to say.

The Court: What citation is that?

MR. DWIGHT: *Olmstead v. United States*, 72 U. S. Law Ed. 944. I begin to read from page 954 of the decision or at page 474 in your Honor's volume of the decision. The Court will remember that the wire-tapping case was a new situation which arose as a result of tapping wires and obtaining information while not on the premises of the defendant. The Court was divided five to four. The majority decision by Chief Justice Taft sustained the admissibility of the evidence upon the ground that the 4th Amendment had not been violated, and that the 4th and 5th Amendments sort of run together, therefore there was no incrimination by the evi-

dence. Justice Brandeis, [156] who made a most thorough study of the question, contended that the evidence was inadmissible because it was unethically as well as illegally obtained and the four justices agreed with Justice Brandeis. Since that time the new wire-tapping case came to the attention of the Court only recently and I have it in the advance sheets. It was decided on the 20th of December, 1937, *Nardone vs. United States*, 58 Supreme Court Reporter 275. There they held that evidence obtained illegally or unethically was illegal, but I do want to read from page 952.

The Court: In the *Olmstead* case, page 950?

Mr. Dwight: In the *Olmstead* case at page 952. Before going on to it, Mr. Justice Holmes said: (Reading)

“My Brother Brandeis has given this case so exhaustive an examination that I desire to add but a few words. While I do not deny it, I am not prepared to say that the penumbra of the 4th and 5th Amendments covers the defendant, although I fully agree that courts are apt to err by sticking too closely to the words of a law where those words import a policy that goes beyond them”;

and he agrees with Brandeis' decisions, and basing his decision upon the *Silverthorne* case Justice Brandeis said this, speaking of the 4th and 5th Amendments: (Reading)

“When the 4th and 5th Amendments were adopted, ‘the form that evil had theretofore taken’ had been necessarily simple. Force and violence were then the only means known to man by which a government could directly effect self-incrimination. It could compel the individual to testify—a compulsion effected, if need be, by torture. It would secure possession of his papers and other articles incident to his private life—a seizure effected, if need be, by breaking and entry. Protection against such [157] invasion of ‘the sanctities of a man’s home and the privacies of life’ was provided in the 4th and 5th Amendments, by specific language.”

That is what I am driving at. The information leading to the issuance of a subpoena and leading to the calling of this witness has been unlawfully secured. (Reading from *Olmstead v. United States*, 72 U. S., Law Ed. 944) And in this particular case, by a witness—I am speaking both of the Rodgers girl and this last witness—Miss Rodgers saw this apparatus in there; Kiehm saw it and put it in. (Reading further from *Olmstead v. United States*, 72 U. S. Law Ed. 944) That is the basis of my objection. Any such use constitutes a violation of the 5th Amendment. I submit, may it please the Court, under the last ruling, I might say the case goes on and the minority opinion in that case holds that

unethical evidence or evidence illegally obtained could not be used. Then along came the Supreme Court of the United States and they held definitely that evidence obtained illegally cannot be used. That is the last word from the Supreme Court of the United States.

The Court: Will you give the volume?

Mr. Dwight: Volume 6 of the advance sheets at page 250. May it please the Court, in view of the subsequent cases, the Supreme Court has subsequently held this evidence couldn't be used at all, particularly in view of this decision in the Olmstead case. I submit all of this evidence of Miss Rodgers and this last witness is incompetent, [158] irrelevant and immaterial, tending to incriminate this defendant and violated her rights under the 5th Amendment.

Mr. Young: Just briefly. I have nothing further to add except as to what was said in regard to Miss Rodgers and Kiehm. He is testifying on his own information. The police found a man dead out on the sidewalk. I submit there is nothing from this man's testimony that shows anything to connect him with the illegal search. If your Honor will read this last case, it is based upon a Federal statute.

Mr. Dwight: This last decision was based upon a Federal statute and this Court held definitely that evidence obtained illegally and unethically is in violation of law.

The Court: Pass me just that advance sheet.
(Mr. Dwight handed same to the Court.)

Mr. Dwight: That is only on the question of wire-tapping. Chief Justice Taft sustained it. They hadn't been on the premises.

The Court: In the first place, there is no evidence at all to show in what manner Kiehm was secured as a witness.

Mr. Dwight: Yes, there is testimony on cross-examination definitely points that out. On cross-examination I asked him definitely. The Court will recall that Lou Rodgers on her cross-examination was asked by me if the police asked her—— [159]

The Court: I remember.

Mr. Dwight: (Continuing) —who put that apparatus in.

The Court: I am not talking about Kiehm's evidence.

Mr. Dwight: I am speaking of the evidence so far, the answer of Miss Rodgers. She said she wouldn't answer first, then she said a garage man. Kiehm's testimony on cross-examination was that they showed him this apparatus, show him this apparatus and asked him if he put that in "Speed" Warren's house and that was the first thing they did. Then he said yes, then he went to work and described how he put it in. That is the record.

(A brief recess was taken.)

The Court: The Court has emphatically, and I believe clearly ruled that this evidence——

Mr. Young: Does your Honor want to make this ruling in the presence of the jury?

The Court: The Court has already emphatically, and I believe clearly, ruled that this evidence seized in the manner that it was by the police, was improper, illegal and in violation of the constitutional rights of the defendant under the 4th and 5th Amendments thereof and that evidence has been suppressed, but in the Silverthorne case it was stated and held that that evidence is not sacred nor inaccessible. The question resolves itself into whether or not this evidence of witness Kiehm and witness Rodgers was dependent upon this [160] illegal search and seizure. If it was, it would be stricken by the Court and excluded from the record. The Court believes that is the test in the cases cited, as far as the Court has read them in every case. The Court has read the testimony, for instance, in the Flagg case, 233 Federal page 481, where letters were illegally seized, and there was an illegal search and seizure. The Federal attorney studied that evidence for a period of three years and secured secondary evidence from the evidence illegally seized. The Court held, of course, that that secondary evidence was just as much a violation of the constitutional rights as the primary evidence, where an officer will gain information, for instance, in making copies of papers or gain evidence of other apparatus or gain leads from the illegally seized evidence. These cases have all been examples where the evidence sought to be introduced in the trial of the defendant was gained solely from the illegal

evidence and entirely dependent upon that illegal evidence. In the case at bar the Court finds that the evidence of Lou Rodgers was not in any sense of the word dependent upon the seized illegal evidence. She was an inmate of the house, was seen living in the house by the police a year prior to the death of Officer Lee and her evidence was based entirely upon her independent knowledge. Certainly her evidence is not in any sense of the word dependent upon illegal seizure by the police. The mere fact that she was given the opportunity to [161] see and look at the illegally seized evidence does not bring it in within the rule of the authorities cited. Her evidence was primarily based upon her independent knowledge of the equipment which she saw installed. In the course of her examination by the police upon her independent knowledge, it was discovered by the police that witness Kiehm was the man she saw installing the equipment. This source was, in itself, entirely independent of the illegal search and seizure and consequently it is proper for the prosecution to introduce witness Kiehm and is not a violation in any respect of the defendant's constitutional rights. Witness Kiehm also testifies from his independent knowledge, free and clear of the illegal search and seizure. His knowledge of how the electrical equipment looked and how it was put in and installed was based upon his actual experience and personal knowledge thereof. Here again the mere fact that he was shown that equipment,

which had been illegally seized, is not enough to bring his independent personal knowledge of that equipment within the ruling of this Court in respect to the illegally seized evidence, as was definitely stated in the Silverthorne case in 251 U. S. at page 392; (Reading)

“Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government’s own wrong cannot be used by it in the way proposed,” [162]

which in that case was copies of papers illegally seized. Here the evidence of Rodgers and Kiehm was gained from an independent source and that may, therefore, be proved like any other evidence based in this case upon their personal and independent knowledge and clearly not solely gained by the government’s own wrong nor dependent upon that wrong. Consequently, the Court overrules the defendant’s motion to strike this evidence.

(The jury returned to the court-room and jury box.)

The Court: Mr. Reporter, Mr. Clark, will you read the Court’s decision overruling defendant’s motion?

(The reporter read as follows:)

“The Court: The Court has already emphatically, and I believe clearly, ruled that this

evidence seized in the manner that it was by the police, was improper, illegal and in violation of the constitutional rights of the defendant under the 4th and 5th Amendments thereof and that evidence has been suppressed, but in the Silverthorne case it was stated and held that the evidence is not sacred nor inaccessible. The question resolves itself into whether or not this evidence of witness Kiehm and witness Rodgers was dependent upon this illegal search and seizure. If it was, it would be stricken by the Court and excluded from the record. The Court believes that is the test in the cases cited, as far as the Court has read them in [163] every case. The Court has read the testimony, for instance, in the *Flagg* case, 233 Federal page 481, where letters were illegally seized, and there was an illegal search and seizure. The Federal attorney studied that evidence for a period of three years and secured secondary evidence from the evidence illegally seized. The Court held, of course, that that secondary evidence was just as much a violation of the constitutional rights as the primary evidence, where an officer will gain information, for instance, in making copies of papers or gain evidence of other apparatus or gain leads from the illegally seized evidence. These cases have all been examples where the evidence sought to be introduced in the trial of the defendant was

gained solely from the illegal evidence and entirely dependent upon that illegal evidence. In the case at bar the Court finds that the evidence of Lou Rodgers was not in any sense of the word dependent upon the seized illegal evidence. She was an inmate of the house, was seen living in the house by the police a year prior to the death of Officer Lee and her evidence was based entirely upon her independent knowledge. Certainly her evidence is not in any sense of the word dependent upon illegal seizure by the police. The mere fact that she was given the opportunity to see and look at the illegally seized evidence does not bring it in within the rule of the authorities cited. Her evidence was primarily [164] based upon her independent knowledge of the equipment which she saw installed. In the course of her examination by the police upon her independent knowledge, it was discovered by the police that witness Kiehm was the man she saw installing the equipment. This source was, in itself, entirely independent of the illegal search and seizure and consequently it is proper for the prosecution to introduce witness Kiehm and is not a violation in any respect of the defendant's constitutional rights. Witness Kiehm also testifies from his independent knowledge, free and clear of the illegal search and seizure. His knowledge of how the electrical equipment looked and how it was put in and installed was

based upon his actual experience and personal knowledge thereof. Here again the mere fact that he was shown that equipment, which had been illegally seized, is not enough to bring his independent personal knowledge of that equipment within the ruling of this Court in respect to the illegally seized evidence, as was definitely stated in the Silverthorne case in 251 U. S. at page 392, (Reading)

‘Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government’s own wrong cannot be used by it in the way proposed,’

which in that case was copies of papers illegally seized. Here the evidence of Rodgers and Kiehm was gained from an independent source and that may, therefore, be proved like any other evidence [165] based in this case upon their personal and independent knowledge and clearly not solely gained by the government’s own wrong nor dependent upon that wrong. Consequently, the Court overrules the defendant’s motion to strike this evidence.”

Mr. Dwight: May I save an exception to the Court’s ruling?

The Court: Exception saved and noted.

Mr. Dwight: On the grounds stated, and I renew my objection all the way through, including this witness, your Honor, on the same ground.

The Court: All right. [166]

LUCY McGUIRE,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Lucy McGuire.

Mr. Young: Miss McGuire, will you speak up a little louder?

Q. What is your name, please?

A. Lucy McGuire.

Q. Just a little louder. Where do you live, Miss McGuire? A. Waialua.

Q. What place at Waialua?

A. Portuguese Camp.

Q. Just a little louder. Do you know a person by the name of Ilene Warren also known as "Speed" Warren? A. Yes.

Q. Is she here in the court-room?

A. Right there in the white hat (indicating the defendant).

Mr. Young: Let the record show the identification.

The Court: Let the record so show.

(Testimony of Lucy McGuire.)

By Mr. Young:

Q. How long have you known her?

A. About a year now.

Q. How did you become acquainted with her?

A. I was working for her.

Q. When did you work for her? [167]

A. Either in July or August, 1936.

Q. Either in July or August, 1936?

A. Yes.

Q. Just a little louder, please.

A. It was either in July or August 1936.

Q. What did you do for Mrs. Warren at that time?

A. I cooked, cleaned the house and did her laundry.

Q. Who else was living there at that time?

Mr. Dwight: Objected to as incompetent irrelevant and immaterial.

The Court: Objection overruled.

Mr. Dwight: Exception.

The Court: You can answer.

A. Lou Rodgers and two other girls.

By Mr. Young:

Q. Do you know the names of the other girls?

A. No.

Q. Was Mrs. Warren living there then?

A. Yes.

Q. Anyone else? A. No.

Q. Mrs. Warren, yourself, Miss Rodgers and two other girls? A. Yes.

(Testimony of Lucy McGuire.)

Mr. Dwight: Just a moment. She was not living there.

A. Yes, I had my own room.

By Mr. Young:

Q. Where was your room located?

A. Downstairs. [168]

Q. How many bedrooms are there downstairs?

A. Four bedrooms.

Q. You look at these exhibits on the board up there, Miss McGuire, Exhibits "D", "E", "F" and "G" in evidence (indicating), and tell me whether or not you recognize the house there?

A. That is her house there (indicating).

Q. Are you acquainted with the upstairs and the downstairs of that house? A. Yes.

Q. Are you familiar with the rooms?

A. Yes.

Q. Do you know whether or not a stairs leads upstairs from downstairs? A. Yes.

Mr. Dwight: I object to counsel leading the witness, not only by words but by signs.

The Court: Objection will be sustained.

By Mr. Young:

Q. Will you take this ruler? (Handing same to witness.) Will you tell me whether or not there was any stairs leading from the bottom floor of that house to the upstairs?

A. Yes, one going upstairs.

Q. One going upstairs?

(Testimony of Lucy McGuire.)

A. Yes, there is another one going in the Kitchen.

Q. Where does that go to?

A. To the living-room upstairs.

Q. Are there any windows in that room that faces Muliwai Street?

A. Yes, right here (indicating) and two windows to the [169] living-room.

Q. Will you state whether or not there are windows at the top of the stairway?

A. Right here (indicating). You could see outside from that window.

Q. You can look through that window and see who is downstairs at the front door?

A. Yes, sir.

Q. Have you ever done that yourself?

A. Yes.

Q. Have you ever seen "Speed" Warren look out that window? A. Yes, a lot of times.

Q. Now, do you know of your own personal knowledge what that house was used for?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial, tending to bring the character of this defendant directly in issue. I submit that tends to bring the character of the defendant in issue. The Court has already ruled it is not admissible.

Mr. Young: On several occasions this same matter has come up. Your Honor knows from the offers of proof what the exact purpose of this evidence is

(Testimony of Lucy McGuire.)

for, not to cast any reflection on the character of this defendant.

Mr. Dwight: I don't care. This Court has to determine what the effect of that testimony is. If it is bringing the character of the defendant into issue, then it is inadmissible. He does not [170] even have to make an opening statement to the jury. This Court has to determine the question of the effect of any evidence. Certainly this Court cannot say that testimony and the testimony of the witnesses the other day does not tend to bring in issue the character of the defendant.

The Court: The Court overrules the objection. The purpose of the testimony is not to bring in issue the character of the defendant. The purpose is as already stated. The Court overrules the objection.

Mr. Dwight: May I have an exception?

The Court: You may have an exception.

Mr. Young: Instruct Mr. Dwight not to disturb me.

Mr. Dwight: I apologize, Mr. Young.

(The last question was read.)

The Court: Answer the question.

Mr. Dwight: Just a moment. I have another ground, calling for the conclusion of this witness. Maybe that is a substantial ground, calling for the conclusion of this witness.

The Court: Have you anything to say on that?

Mr. Young: I submit it, your Honor.

(Testimony of Lucy McGuire.)

The Court: The Court will sustain the objection, calling for a conclusion of the witness. Objection sustained.

By Mr. Young:

Q. Miss McGuire, you testified that some girls lived there? A. Yes. [171]

Q. What type of work, what were the girls doing there?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial. The character of the girls is not before the Court. It is not an issue in this case.

The Court: The Court will overrule the objection.

Mr. Dwight: I save an exception.

The Court: Exception may be noted. This answer will be based upon what you saw and what you know of your own knowledge.

Mr. Dwight: And also again calling for the conclusion of this witness.

By Mr. Young:

Q. Will you tell us what you saw in that house? That is all we want.

A. Well, there were a lot of soldiers coming in to see the girls.

Q. What did the soldiers do, if anything; after they got through what did they do?

A. They went to see a girl; the girls would take them in the room. The girl would come back and give that money; go in the room with soldiers, stay three or four minutes and come out.

(Testimony of Lucy McGuire.)

Q. Would the girls be in the rooms alone with the soldiers? A. Yes.

Q. What did you do with this money? Did they give you the money?

A. Sometimes they gave it to me. [172]

Mr. Dwight: Objected to as leading.

The Court: Objection overruled.

Mr. Dwight: I will save an exception to the Court's ruling.

The Court: Exception may be noted.

Mr. Dwight: Q. Sometimes they gave it to you?

A. Yes, to put away in the box.

By Mr. Young:

Q. Did you ever see them give it to anybody?

A. Sometimes to "Speed" Warren.

Q. What did you do with the money they gave you?

A. We had a box with the girl's name on it.

Q. What did you do with the money when they gave it to you?

A. Put it in the box so that the girls could have it when "Speed" came.

Q. Did you ever give any money to "Speed" Warren?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial and as leading.

The Court: Objection overruled.

A. Sometimes I gave it to her; sometimes I put it in the box. When she wasn't there, I would always tell her.

(Testimony of Lucy McGuire.)

Q. Now, what rooms in the house were used for this purpose that you testified to?

A. Downstairs.

Q. The upper portion of the house, did any girls go up there?

Mr. Dwight: Objected to as leading, incompetent, irrelevant and immaterial. I will waive [173] the oath and will counsel testify, if the Court is going to rule this way. I certainly do object to this testimony, continually putting the questions, the facts into the witness' mouth and calling for an answer "Yes". I submit that is a leading question. Leading questions are incompetent.

The Court: The Court will sustain the objection to the form of the question.

By Mr. Young:

Q. You testified that the rooms on the bottom floor were so used? A. Yes, trick rooms.

Q. Were any other rooms in the house so used?

A. No, not upstairs, just downstairs.

Q. What did you testify they were called?

A. Trick rooms.

Q. Who called them that?

A. "Speed" Warren.

Q. Now, during the time that you lived there, while Lou Rodgers was there, did you ever notice anything unusual about the doors in that house?

A. Not until I, myself, was going to throw the garbage out one night. It was raining; my hands were wet; I touched the door and got a shock.

(Testimony of Lucy McGuire.)

Mr. Dwight: Can I have that answer?

(The last answer was read.)

By Mr. Young:

Q. What door was that, that you touched?

A. The front door. [174]

Q. How did you touch it? Will you illustrate?

A. Well, there is a little knob there. I was just going to hold it and got shocked.

Q. You touched the knob? A. Yes.

Q. Just put one hand on it?

A. Yes, I had to hold the garbage with the other.

Q. Did you have any conversation with "Speed" Warren about that incident?

A. She was upstairs. I told her; she started laughing and told me not to touch the door. She said it was loaded with electricity. She told me about the switch, where it was and everything.

Q. Where was the switch?

A. Right by the side of the door.

Q. Did she point to the switch?

A. She told me if I turned it all the house would be all loaded with electricity.

Q. Did she tell you what that switch was for?

A. She said to scare the soldiers and in case of a raid.

Q. She said to scare the soldiers and in case of a raid? A. Yes.

Q. What else did she say, if anything?

(Testimony of Lucy McGuire.)

A. That is all I know.

Q. Did she ever give you any instructions as to what to do in case of a raid?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial. [175]

The Court: Objection overruled.

Mr. Dwight: Exception.

The Court: Exception noted.

A. Yes, she told me in case of a raid to call her lawyer up and he would know what to do.

Mr. Dwight: You mean after you were pinched.

By Mr. Young:

Q. Now, during the time you lived there, do you recall—I will withdraw that question. May I have just a moment, your Honor? Did "Speed" Warren show you anything else but the switch?

A. Yes.

Q. What else did she show you?

A. Well, I knew where the transformer was.

Q. Where was the transformer?

A. In the door downstairs.

Mr. Dwight: I move to strike that answer as irresponsible to the question.

The Court: Objection overruled.

(The last question and answer were read.)

Mr. Dwight: That is the question and answer I take an exception to.

(Testimony of Lucy McGuire.)

By Mr. Young:

Q. This switch, with reference to the stairway, which stairway and what part of the house was this located?

A. One going upstairs to the living-room.

Q. Would that be on the righthand side, if you are going upstairs to the living-room?

A. It was on your right side.

Q. And what part of the house was it attached to? [176]

Q. Right by the door? A. Yes.

Q. Was it on the door itself?

A. No, not on the door but on the side.

Q. Will you step over to this door by his Honor and illustrate where it was with relation to the door, if your Honor doesn't mind?

A. Coming in here (indicating), it was just inside here.

Q. Where you have indicated.

Mr. Dwight: Indicating a point just even with the knob, indicating about four feet (from the floor).

By Mr. Young:

Q. Now, did anyone else come there besides soldiers, that you know of?

Mr. Dwight: Objected to as leading.

The Court: Sustained.

By Mr. Young:

Q. Who came to this house during the time you worked there?

(Testimony of Lucy McGuire.)

A. Soldiers was the only ones allowed in.

Q. Did they come regularly or did they come at any special time? A. They came regular.

Q. Regular? A. Yes.

Q. Did you ever touch this switch at any time you were in this house? A. No.

Mr. Dwight: Objected to as already asked and answered, incompetent and irrelevant. [177]

By Mr. Young:

Q. Did you ever touch this switch?

A. No.

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial

The Court: Objection overruled.

By Mr. Young:

Q. What part of this house did "Speed" Warren generally frequent while you were there?

A. Beg pardon?

Q. What part of this house did she usually stay in? A. Upstairs.

Q. Now, while this was going on downstairs that you have testified to by the soldiers, did you have any particular duties to perform while these soldiers were downstairs with the girls?

A. No, I was most of the time—I was upstairs most of the time.

Q. While these people were in there, did you have any special thing to do?

(Testimony of Lucy McGuire.)

A. When she wasn't there, she would tell me to go and knock on the door when fifteen minutes were over.

Mr. Dwight: May I have my same objection and exception to this line of testimony?

The Court: You may. Let the record so show.

By Mr. Young:

Q. Now, with reference to the front of the house, Miss McGuire, will you state what kind of walls there are near the front door? Did you get my question? With reference to the front door here (indicating), can you state what [178] kind of walls are on both sides of that door, what they were made of, what material? A. I don't remember.

Q. You don't recall whether there was a wooden wall on each side? Was it a screen or what?

Mr. Dwight: I object as already asked and answered, being very leading.

Mr. Young: Read the last question.

(The last question was read.)

A. On this side there was a screen (indicating).

Q. Will you point exactly where that screen was?

A. On this side there was a screen (indicating).

Mr. Dwight: The witness indicates the left side of the house.

A. Right here by the door there is a screen (indicating); here is all wall (indicating).

(Testimony of Lucy McGuire.)

By Mr. Young:

Q. That is a wood wall? A. Yes.

Q. Do you recall whether or not that screen is open or covered? A. Well, it is open.

Q. It is to the left of the door? A. Yes.

Q. Could you see in the house or out of the house through that, just looking at it?

A. No, she had a cloth over there.

Q. She had a cloth over there? A. Yes.

Q. Is that the cloth on the outside of the house or inside? [179] A. Inside.

Mr. Young: No further questions. Your witness.

Cross Examination

By Mr. Dwight:

Q. How long did Lou Rodgers live in the house?

A. I don't know.

Q. You don't know when she left?

A. She left on August 4th.

A. Are you sure? A. Yes.

Q. Who gave you that date?

A. Because I was there at the time.

Q. How did you come to the conclusion that it was August 4th?

A. Well, I know for sure. I was there at the time.

Q. You were there at the time that she left?

A. Yes.

Q. And you started to work for "Speed" in June or July; that is right? A. Yes.

(Testimony of Lucy McGuire.)

Q. Sometime after you started working there Lou Rodgers left, didn't she? A. Yes.

Q. Now, did Lou Rodgers tell you that it was August 4th?

A. No, I didn't talk to Lou Rodgers.

Q. How did you come to that date?

A. Because I know it.

Q. Definitely sure about it, August 4th. Did she [180] come back and move in?

A. No, she did not come back.

Q. You saw her leave? A. Yes.

Q. All right. Who did she leave with?

A. By herself.

Q. At day or night time?

A. She left in the night and did not come back no more.

Q. She didn't come back, just went off on a drunk?

A. No, she didn't go on a drunk. She just went to her own house.

Q. She had another house?

A. She had her own place. She had a house, still she was staying with "Speed".

Q. Now, when did you leave "Speed's" employ?

A. March 15th.

Q. 1937? A. 1937.

Q. How did you happen to give your statement in this case? A. Because they came for me.

Q. Who came for you? A. Policeman.

Q. A policeman in company with whom?

(Testimony of Lucy McGuire.)

A. By himself.

Q. You were taken down to the Police Station?

A. Yes.

Q. You were questioned down at the Police Station? A. Yes. [181]

Q. Do you remember what date that was?

A. No.

Q. Do you remember the date when the man died up there? Was it after that date?

A. It was after that, yes.

Q. You know how many days after?

A. No.

Q. You went down to the Police Station?

A. Yes.

Q. And did they show you a lot of wire and things down there,—Captain Hays?

A. No, just the door.

Q. They showed you a door. Show you some wire? A. No.

Q. They didn't. They asked you about that door?

A. That is the way.

Q. What was the first question they asked you?

A. I don't remember.

Q. You don't remember. So they showed you this door? A. Yes.

Q. Then they started to ask you? A. Yes.

Q. They asked you what you knew about that door? A. Yes.

Q. They asked you if you knew who fixed up that door? A. Yes, but I don't know.

(Testimony of Lucy McGuire.)

Q. You don't know? A. No.

Mr. Young: I object to this line of testimony. The proper procedure is to ask her. [182]

The Court: It is.

(The last question and answer were read.)

By Mr. Dwight:

Q. Then they began to ask you about a switch?

A. Yes.

Q. Then you told them about a switch?

A. Yes.

Q. Then they asked you about a transformer?

A. No, I already knew that.

Q. They didn't ask you about a transformer?

A. No.

Q. They asked you where the switch was?

A. Yes.

Q. Did they show you a switch? A. No.

Q. What else did they ask you about?

A. It has been so long I don't remember.

Q. Oh, I see. Did they ask you anything about the window upstairs? A. No, not at the time.

Q. Not at the time. He asked you about that over here, Mr. Young.

A. No, I told him myself.

Q. All right. How did you get out of that window?

A. There is a screen; you open the screen and look out.

(Testimony of Lucy McGuire.)

Q. In other words, there is a screen; you have to open the screen, poke our head out and that is the only way you can see that door? A. Yes.

Q. You can see it standing inside with the screen closed? [183] A. No.

Q. You have to poke your head out?

A. Yes.

Q. When you said on direct examination, Miss McGuire, that you saw Lex Rodgers look out of the window,—she stuck her head out,—she would have to open the screen and stick her head out and look down? A. Yes.

Q. Same way with Mrs. Warren? A. Yes.

Q. Now, you used the expression in here—I will withdraw that question. You spent most of your time upstairs? You were Mrs. Warren's maid?

A. Yes.

Q. You said something about a box, money box?

A. Yes.

Q. You said they had tines on them?

A. Yes.

Q. You put some money there? A. Yes.

Q. *How*, how many times have you been bitten by that door? A. One.

Q. And you say it was aining hard?

A. Yes, it was raining.

Q. You went outside & put the garbage out, then you came back in and got a shock?

A. When I was going out I got a shock; my hands were wet.

(Testimony of Lucy McGuire.)

Q. It had been raining hard. When it rains hard the [184] water runs down?

A. It is level; the water can get in.

Q. It was wet that night? A. Yes.

Q. You touched the door; you got a shock?

A. Yes.

Q. You say Mrs. Warren told you that that was put there to scare away the soldiers? A. Yes.

Q. Did she say what kind of soldiers, drunken soldiers or sober soldiers?

A. Drunken soldiers.

Q. Have you ever had any trouble down there with drunken soldiers? A. Sometimes.

Q. She also told you that in case you were raided, if she was arrested, to telephone to the lawyer? A. Yes.

Q. That is all she said, "He would know what to do"? A. Yes.

Q. Now, when you got the shock you say Mrs. Warren started laughing and said, "Don't touch the door". Did she tell you anything else?

A. She said it was loaded with electricity.

Q. You touched it and got shocked?

A. Yes, I did.

Mr. Dwight: No further questions.

Redirect Examination

By Mr. Young:

Q. Now, Miss McGuire, when did you leave the employ [185] of "Speed" Warren?

A. March 15th.

(Testimony of Lucy McGuire.)

Q. What year? A. 1937.

Q. You have testified that Lou Rodgers left there on August 4th? A. Yes.

Q. Now, was it before August 4th or after that you received this shock?

A. It was before; Lou Rodgers was still there.

Q. How long before? A. I am not sure.

Q. Just give us your idea. How long before?

A. It was about two or three weeks.

Q. It was about two or three weeks before August 4th that you received this shock?

A. Yes.

Q. Do you know whether or not—Do you know John Kiehm? A. Yes.

Q. Had you seen him around that house at any time? A. Yes.

Q. Did you ever see him do any work?

A. He came to do some work there.

Mr. Dwight: If counsel wants to reopen his direct examination, I will consent.

The Court: You wish to reopen your direct?

Mr. Young: Yes, with your Honor's permission.

Q. What did you see John Kiehm do, if anything around the house?

A. He came to fix the door bell, and he fixed something [186] in the back door. I don't remember what it was.

Q. Was that before you received the shock?

A. I received the shock already.

Q. Then he came?

(Testimony of Lucy McGuire.)

A. Yes, he fixed the door bell.

Q. Did you ever get a shock after that?

A. No.

Q. Are you sure about that? A. Sure.

Q. Will you tell what lawyer it was?

Mr. Dwight: I will admit it. I have been her lawyer for eleven years, if counsel wants to know.

By Mr. Young:

Q. You have testified that "Speed" had to push the wire screen out? A. Yes.

Q. Did she do that often?

A. On paydays mostly.

Q. Why did she do that?

Mr. Dwight: Objected to as calling for the conclusion of the witness.

The Court: Objection sustained.

By Mr. Young:

Q. Why did she do that?

A. Just to see if they were soldiers. If they were not soldiers, they weren't allowed in the house.

Q. What was the procedure when someone came to the door? What would happen when someone came to the door?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial. [187]

Mr. Young: It is very relevant.

The Court: Objection overruled.

Mr. Dwight: Exception.

(Testimony of Lucy McGuire.)

By Mr. Young:

Q. What would take place when some soldier came to the door, some man?

A. We would open the door, let him in and take him into the reception room downstairs and ask him if he wanted to see a girl.

Q. When a man first came to the door—

A. Because they ring the door bell.

Q. (Continuing) where would you look out from, from the window?

A. Sometimes she looked out the door, just looked out the door.

Q. If it is a soldier, you would let him in?

A. Yes.

Q. Now, everything that you have told us here is what you remember of the house, what you know, what you told us here? A. Yes.

Q. Based on your own memory? A. Yes.

Mr. Young: No further questions.

Recross Examination

By Mr. Dwight:

Q. After Lou Rodgers left "Speed"—Where did you go to work after you left Mrs. Warren? Where did you go to work?

A. When I left "Speed's", she didn't pay me. I didn't have any money. I went over to Lou's. [188]

Q. By "Lou's" you mean Lou Rodgers?

A. Yes.

(Testimony of Lucy McGuire.)

Q. When did you move in with Lou Rodgers?

A. March 15, 1937.

Q. You are still with Lou? A. No.

Q. When did you leave Lou?

A. June 17th.

Q. You left Lou Rodgers on June 17th?

A. Yes.

Q. And while you were with Lou Rodgers, did you talk this case over with her? A. No.

Q. And you want this Court and jury to believe that you know definitely that Lou Rodgers left on August 4th? You have your own independent memory of that date, eh? A. No.

Q. Where did you get that August 4th from?

A. Lou Rodgers told me, yes.

Q. Exactly. Lou Rodgers told you when you came into Court?

A. Lou Rodgers left on August 4th.

Q. That is the only thing you talked about?

A. Yes.

Q. You didn't talk about this electrical equipment? A. No, I already knew about it.

Q. Did you refresh your memory with Miss Rodgers? A. No.

Q. You didn't talk about it at all? A. No.

[189]

Q. And what was Lou Rodgers doing down in that house while you were there living with her?

A. She was one of "Speed's" girls.

(Testimony of Lucy McGuire.)

Q. "Speed's" what? I mean after she moved out, when you were down there at her house. What was she doing?

A. Same thing as "Speed" was going.

Q. Operating a house of prostitution?

A. Yes.

Q. She was arrested while you were there?

A. I don't remember.

Q. You don't remember. Did you talk to anybody else besides Lou Rodgers about this case?

A. No.

Q. Nobody. You have already told me about talking to the police. Just the police?

A. They brought me to the police headquarters.

Q. Then you talked to Mr. Young?

A. Yes.

Q. Then you talked to Lou Rodgers?

A. Yes.

Q. Have you seen Lou Rodgers since she testified the last time she was in?

A. She left; I haven't seen her.

Q. Did you talk to her out here? A. Yes.

Q. Did you talk about her testimony out here?

A. No, we didn't talk about this case or what she said. We was told not to talk about it. A fellow told me not to talk about it.

Q. Who was that man? [190]

A. He isn't here.

Q. You mean somebody that works for the Public Prosecutor's Office?

(Testimony of Lucy McGuire.)

A. I don't know who he is. He told us not to talk about what happens in here.

Mr. Dwight: I think that is all.

Redirect Examination

By Mr. Young:

Q. This was June 1937 that you left there—I mean you left Lou Rodgers place? A. Yes.

Q. June last year? A. Yes.

Q. Before the death of this man?

A. Yes, I went down to Haleiwa and worked.

Q. Have you worked for Lou Rodgers since that date? A. No.

Rerecross Examination

By Mr. Dwight:

Q. When did you work for Mrs. Warren?

A. In July or August.

Q. Of what year? A. 1936.

Q. 1936? A. Yes.

Q. When did you leave? A. 1937.

Q. 1937? A. 1937.

Q. What month? [191] A. March 15th.

Q. That was before this accident happened out there? A. Yes.

Q. And you were working for Lou Rodgers when the accident happened?

A. No, I was down Haleiwa working.

Q. Now, when did you talk to Lou Rodgers about this August 4th, the date that she left? When did you talk?

(Testimony of Lucy McGuire.)

A. The other day in here she just told me.

Q. The other day in here. That was after Lou Rodgers had testified in this trial?

A. She didn't say anything; she was told not to talk about it.

Q. Then she came out and told you she had left on August 4th? A. Yes.

Q. That is why you are testifying to it it was August 4th? A. Yes.

Mr. Dwight: No further questions.

Reredirect Examination

By Mr. Young:

Q. Miss McGuire, when is your best recollection, irrespective of what she told you, when did she leave?

A. I know it is somewhere around August.

Q. From your own recollection, it would be August? A. Yes, it was August.

Mr. Young: No further questions. [192]

Rererecross Examination

By Mr. Dwight:

Q. She didn't leave on the 11th of September or the 12th of September? A. Eh?

Q. Lou Rodgers didn't leave "Speed" Warren on the 12th of September?

A. No, I know it was in August.

Q. You are sure of that?

A. I know it was August.

Mr. Dwight: That is all.

Mr. Young: That is all.

The Court: All right. Witness excused.

JAMES P. MICHELS,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. James P. Michels.

Q. What is your profession, Mr. Michels?

A. I am in charge of the Distribution and Transmission Department for the Hawaiian Electric Company.

Q. Mr. Michels, I will appreciate if you repeat that over again, what you are.

A. I am in charge of the Distribution and Transmission Department for the Hawaiian Electric Company.

Q. And your duties are, briefly, in regard to that?

A. I have charge of the installation of all the wires on the Island here. [193]

Q. On this Island? A. On this Island.

Q. Does that include all the wires leading from the various substations and from poles into homes? You would have supervision of that?

A. Yes, sir.

(Testimony of James P. Michels.)

Q. You have charge of any of the records as to who is furnished electric light and power, for your Company? A. We keep records.

Q. In your official position? A. Yes.

Q. Are you acquainted with the Wahiawa District, as far as the power line is concerned?

A. Yes.

Q. Will you state whether or not on August 3, 1937, your Company was furnishing power,—electric light and power to a person by the name of Ilene Warren, alias “Speed” Warren?

A. May I be allowed to refer to this? (Referring to papers.)

Q. Those are the official records of your Company?

A. These are, just a meter record. (Referring to paper.) The name is I. C. Warren.

Q. What address?

A. Wahiawa; two-story green house, second house from Hawaiian Electric Company substation.

Q. And was that the party being furnished electricity from the Hawaiian Electric Company?

A. Yes, sir.

Q. On that date, August 3, 1937? [194]

A. Yes, sir.

Q. Do you know what voltage was going into that house from the line?

Mr. Dwight: From your own knowledge.

(Testimony of James P. Michels.)

By Mr. Young:

Q. From your official position, your own knowledge?

A. We have what you call a three-wire service feeding that house 110 volts. It was 115 volts at that time from each outside wire to the ground, 230 volts between the two outside wires.

Q. Now, this voltage you are testifying, is that the voltage that actually went into the house through the fuse plugs, 110 volts?

A. 115 volts it was.

Q. Do you know the short-circuit value of that line out there?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial, as calling for the conclusion of this witness without any proper foundation being laid to establish him as an expert.

Mr. Young: He is Superintendent of this Pole and Line Department.

Mr. Dwight: I will ask that the question be read.
(The last question was read.)

The Court: Will you reframe that question?

By Mr. Young:

Q. Mr. Michels, do you know the short-circuit value of the line from which Mrs. Warren's house is fed with electricity? [195]

A. The low voltage of the wires feeding into her house?

Q. Yes.

(Testimony of James P. Michels.)

A. I can only give you it approximately.

Mr. Young: I will withdraw the question.

Q. Now, are you acquainted with the Wahiawa District, the geography of the streets?

A. Yes, sir.

Q. Will you step down to this Exhibit? This is Prosecution's Exhibit "A" in evidence. (Indicating Exhibit "A" tacked on the blackboard.) (The witness steps down to the blackboard.) This is a plat of a certain district in Wahiawa; Muliwai Avenue (indicating); Neal Avenue (indicating); Kua-hiwi Avenue (indicating); Olive Avenue (indicating). The black circles indicate light poles (indicating); this indicates court house (indicating). Now, with reference to the poles on this diagram, will you state where this home is getting electricity?

A. From Hawaiian Electric Company.

Q. I believe your testimony said two poles?

A. That would be the second house (indicating on Ex. A.)

Q. That would be the second house from the Hawaiian Electric Substation? A. Yes.

Mr. Young: Let the record show that the witness pointed to a house marked "D" and the named "Mary P. Paulos."

The Court: Let the record so show.

By Mr. Young:

Q. Your records show it was the name of "I. C. Warren?" [196] Is that correct? A. Yes.

(Testimony of James P. Michels.)

Q. With reference to this whole plat in here, do you know whether or not the houses are furnished with electricity from the Hawaiian Electric Company?

A. I know those that are supplied with electricity are supplied from our lines. No one else supplies electricity.

Q. And the voltage going into any of those houses on August 4, 1937, would be what you testified to? A. 115 volts.

Q. 115 volts. Now, do you in your duty as Superintendent of the Pole and Light Division—you have charge of the men who handle electricity?

A. Yes, sir.

Q. Does the Hawaiian Electric Company have any rule as to dangerous voltages?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial what the rule of the Hawaiian Electric Company is.

The Court: Objection sustained.

Mr. Young: No further questions.

Cross Examination

By Mr. Dwight:

Q. Mr. Michels, you say that there was a high power line running up along Muliwai Street?

A. Yes, sir.

Q. From down there at the substation?

A. Yes, sir.

Q. What was the voltage on that power line?

(Testimony of James P. Michels.)

A. We have several high power lines. The top circuit [197] on the pole is 44,000; the circuits on the next arm are 4,000; two circuits.

Q. What is the grade of wire that you are using on that main line to carry that 44,000 volts? Will you describe the wire used?

A. The top line is No. 10, medium, hard-ground, bare.

Q. Did you receive any complaints about sparks flying off that wire?

Mr. Young: I object. When?

Mr. Dwight: Say during June, July, August of 1937.

A. When did he die?

Mr. Young: 1937.

By Mr. Dwight:

Q. During the year 1937.

A. I think we had one complaint come in as a radio interference complaint.

Q. You didn't get any complaint about flames flying anywhere from ten to twenty feet off these lines when it was raining? A. No, sir.

Q. Never got such a complaint? A. No.

Q. Who is the name of your trouble man down there? A. Keahi.

Q. Do you keep a record of complaints?

A. Yes.

Q. Now, referring to this wire, No. 10, medium, hard-ground, bare, that is not the first grade wire? It is inferior wire. [198] A. No, it is not.

(Testimony of James P. Michels.)

Q. Is that wire permitted by the Utilities Commission? A. Yes, sir.

Q. The type of wire that is on there now?

A. Yes, sir.

Q. That wire has not been changed?

A. No, sir.

Mr. Dwight: That is all.

Redirect Examination

By Mr. Young:

Q. Now, Mr. Michels, are you personally acquainted with the home of I. C. Warren?

A. I have no personal acquaintance with it.

Q. You have never seen that home?

A. I have passed by. I have never paid any attention to it.

Q. Would you know a picture of it if you saw it?

A. I don't believe I could absolutely recognize it.

Mr. Young: That is all. [199]

EDWARD J. BURNS,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Young:

Q. What is your name, please?

A. Edward J. Burns.

(Testimony of Edward J. Burns.)

Q. What type of work do you do, Mr. Burns?

A. Police work, sir.

Q. How long have you been a police officer?

A. About a year and three months.

Q. About a year and three months?

A. That, sir.

Q. When did you first join the department, police department?

A. November 16, 1936.

Q. And that is the Police Department of the City and County of Honolulu?

A. That is right.

Q. Were you a police officer on August 3, 1937?

A. I was.

Q. And at that time what were *you* general duties? What part of the police work were you in?

A. At that time I was on the midnight shift, working from twelve midnight to eight o'clock in the morning as a foot patrolman.

Q. On that date, August 3, 1937, do you recall whether or not you had any special duty?

A. Yes, sir.

Q. Will you please tell the Court and jury what your special duty was that night, what you did? [200]

A. I was assigned *to with* Captain Caminos to Wahiawa.

Mr. Dwight: May it please the Court, at this time I want to object to the testimony of this witness upon the ground that it is incompetent, irrelevant and immaterial; upon the further ground that it will tend to bring the reputation and character

(Testimony of Edward J. Burns.)

of the defendant directly in issue, the reputation and character of the defendant not having been brought in issue; upon the further ground that any evidence of this witness by observation in the house was illegal and in violation of the Fourth and Fifth Amendments of the Constitution.

The Court: The Court will overrule the objection.

Mr. Dwight: Save an exception.

The Court: Exception may be saved and noted.

By Mr. Young:

Q. Pick up where you left off.

A. I was assigned by Captain Mookini to go with Captain Caminos to Wahiawa to raid the house of "Speed" Warren. We left the Honolulu Police Station at about 5:30 p. m. on August 3, 1937. We arrived at Wahiawa and left the Wahiawa Police Station at about 8:45 p. m.,—Captain Kalauli, Captain Caminos, Officer Chun, Officer Apoliona, Officer Kam Yuen, the deceased and myself.

Q. You say "the deceased"; who do you mean?

A. Wah Choon Lee.

Mr. Dwight: May I have an additional ground of objection, for the record and that is that any [201] evidence that this officer secured was secured without the consent of the defendant and in violation of her rights under the constitution.

Mr. Young: This is a little premature.

(Testimony of Edward J. Burns.)

Mr. Dwight: I don't like this system of putting things in.

The Court: Objection overruled.

Mr. Dwight: Exception.

By Mr. Young:

Q. Would you know the picture of Wah Choon Lee, if you saw it again? A. I would, sir.

Q. I show you Prosecution's Exhibits in evidence "B" and "C". (Handing same to the witness.) Will you examine these pictures?

A. (Examining the same) Both of these pictures are his pictures.

Q. Pictures of Wah Choon Lee. You may proceed.

Mr. Dwight: I would like to hear some questions. I want to object, if they are improper.

By Mr. Young:

Q. You may proceed with your narrative, telling what happened.

Mr. Dwight: I submit the prosecution has a right to question this man. I have a right to object before the narrative comes in.

Mr. Young: He can tell what he knows.

Mr. Dwight: He may get up and testify to things that are incompetent.

The Court: Will you please ask him? [202]

By Mr. Young:

Q. Mr. Burns, you say you went with these seven officers? A. Seven of us altogether.

(Testimony of Edward J. Burns.)

Q. Did you gather at the Wahiawa Police Station? A. We did, sir.

Q. Where did you go from there?

A. We left the Police Station and walked along Kuahiwi Street, where I left the six others, walked up Neal Street, turned down Muliwai and went to "Speed" Warren's place.

Q. How were you dressed?

A. I had on a grey suit, black shoes.

Q. How were the other six officers dressed?

A. All of us were in civilian clothes at the time.

Q. You were all in civilian clothes?

A. That is right, sir.

Q. You say you left them where?

A. At the railroad track crossing prior to leaving Neal Street.

Q. You went from there to the home of "Speed" Warren? A. That is right, sir.

Q. Will you step down to this diagram a moment, please?

A. (The witness steps down to the blackboard on which was tacked Exhibit "A").

Q. Referring you to Prosecution's Exhibit "A" in evidence, that is, just briefly, *te* names of the streets, California Avenue (indicating), Muliwai Avenue (indicating), Kuahiwi Avenue (indicating), the court house (indicating) and the railway track (indicating) down here, are you familiar enough with this to testify? A. Yes. [203]

(Testimony of Edward J. Burns.)

Q. Starting from the court house, will you please trace the route that you took to "Speed" Warren's place?

A. We left the court house here (indicating on Ex. "A"), walked along this way over to here (indicating), where I left the other six officers. They turned up this way (indicating); I continued on this way over to "Speed" Warren's house (indicating on Ex. "A").

Q. And when you got to this point (indicating), that is, in front of "Speed" Warren's house, what did you do when you reached the house? Just tell us.

A. I knocked on the wall next to the front door, and no one answered so I walked out to the road to see if there was another entrance to the house and walked back again to the front door and again knocked on the wall. This time somebody stuck their head through the screen window upstairs. I couldn't see who it was. I knew it was a woman but I couldn't see who it was. I heard footsteps and someone came to the door, looked out, then opened the door and said, "Hello"; I said, "Hello"; she said, "How are you?"; I said, "Fine". This was Billie Penland.

Q. Would you know this person again if you saw her?

Mr. Dwight: I move to strike that testimony as hearsay, conversation between the witness and Billie Penland, not being made in the presence of the defendant.

(Testimony of Edward J. Burns.)

The Court: The motion will be granted, and the statement made by Miss Penland not in the presence of the defendant will be stricken and the jury asked to disregard it. [204]

By Mr. Young:

Q. What kind of a door was this that you saw from the outside after knocking?

A. It appeared to be a thick wooden door, a metal plate on the outside, a glass partition through which one will be able to see up about the average height of a person.

Q. Did the door open in or out?

A. The door opened outwards.

Q. And you say there was a metal plate. Will you describe that metal plate more particularly?

A. The metal plate extended from a little below the window, the pane in the door, to about a foot from the bottom of the door. It was about the width of the door.

Q. Was there any knob or handle on the outside of that door?

A. No, sir, just the outside of the lock.

Q. You say you met this girl, Billie Penland let you in? A. That is right, sir.

Q. After you went in, where did you go?

A. I followed her into the parlor, where she stopped by a wicker table and asked me a question.

Q. Then what happened?

A. I followed her into a room in which there was a bed and dresser and a washstand, and as she

(Testimony of Edward J. Burns.)

stood by me I took off my necktie and started to take off my coat and reached into my pocket and said, "How much?"

Mr. Dwight: Well, I think the Court should remind this witness that he can't testify to hearsay. I ask the Court to instruct the jury to dis- [205] regard that.

The Court: That answer will be stricken from the record. The Court instructs you not to testify as to any conversation not in the presence of the defendant on the ground it is hearsay. The jury is asked to disregard it.

By Mr. Young:

Q. Did you have a conversation with her in that room? A. I did.

Q. As a result of that conversation, did you do anything? A. I gave her three dollars.

Q. Did she take the three dollars?

A. She took the \$3.00 and a basin of water from the washstand and walked out of the room through the back door.

Q. When you first went in that room was the door open or closed? A. I don't recall.

Q. After you got in the room was anything done about the door? A. She shut the door.

Q. Before you gave her this money was the door closed? A. Yes, sir.

Q. And she left by the back door of the room?

A. That is right.

(Testimony of Edward J. Burns.)

Q. Which door did you come in?

A. The front door, sir.

Q. That is the door that leads from which room of the house?

A. From the living-room downstairs.

Q. Was there anyone else in the living-room downstairs [206] when you walked through there with Billie Penland?

A. There were two men, one Charles Erpelding; the other one I didn't see him afterwards so I don't know who he was.

Q. After Billie Penland left the room, how long was it—Did she come back?

A. She came back into the room. I was undressing, had already taken my shoes off and she left the room again by the back door. She came back in the room again by that back door and I had completed undressing. She then reached in the washstand or the bureau drawer and got a towel out and someone came to the back door of the room. She stepped out of the room and a conversation ensued. She came back into the room and someone came to the front door of the room, Marjorie Scott, and some conversation was passed between them about a taxi. The front door of the room was closed again. She went over to the bed and took off her house robe, sat down on the bed, and I reached into the inner breast pocket of my coat, which was lying on top of the bureau, took out a handkerchief, from

(Testimony of Edward J. Burns.)

which I took my badge and police whistle, blew the whistle three times, showed her my badge and told Billie Penland I was a police officer and that she was under arrest for investigation.

Q. Now, at the time you blew your whistle, did Billie Penland have any clothes on?

A. No, sir.

Q. Did you have any? A. No, sir.

Q. About how long was it after you reached the front [207] door was it until you blew your police whistle, if you recall?

A. From the time that I entered the house until I blew my whistle, sir?

Q. Yes. About ten minutes, sir.

Q. About ten minutes. Now, what happened after you blew your police whistle?

A. After I blew my police whistle someone came to the front door of the room, Marjorie Scott, just opened the door. I believe I told her that she was under arrest and she slammed the door.

(The last answer was read.)

Mr. Dwight: I move to strike that part of the testimony as incompetent, irrelevant and immaterial.

The Court: Motion granted.

Mr. Young: May we have our recess?

The Court: It is 12 o'clock. We will adjourn until two o'clock.

Mr. Dwight: I have some matters that are rather urgent. I would like to have an adjournment until tomorrow morning.

(Testimony of Edward J. Burns.)

The Court: What is it you have, some court appearances?

Mr. Dwight: Court appearances and some legal research. I didn't know this witness was going to be called. They have just made their return at the last session. It has been the usual practice to proceed in the morning. The jurymen are all business [208] men and they have to attend to their business. May we hold it up? I want to see the witness I had called.

The Court: Just a minute.

Mr. Dwight: There is one witness that testified this morning. I want to ask her just one more question.

The Court: (To the witness.) Step down.

LUCY McGUIRE,

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Cross Examination

(Continued)

By Mr. Dwight:

The Court: You are under oath.

By Mr. Dwight:

Q. Miss McGuire, at any time during the period that you were employed by Mrs. Warren, did you ever see any "No Trespassing" signs on her premises? A. Yes.

(Testimony of Lucy McGuire.)

Q. And they were large signs? A. Yes.

Q. Visible to any one that wanted to look?

A. Yes.

Q. How many were on there? How many "No Trespassing" signs did you see?

A. I only saw one.

Q. That was in the front? A. Yes.

Q. That was in the vicinity of this area along in here with reference to this hedge (indicating on Ex. "G")? [209] A. Yes.

Mr. Dwight: That is all.

Redirect Examination

By Mr. Young:

Q. With reference to these pictures, can you show us where this sign was located (Referring to Exhibit "G")? A. I can't say.

Q. Get up close. This is the front of the house (indicating). Are you sure there was such a sign?

A. Yes.

Recross Examination

By Mr. Dwight:

Q. Was the sign in about this locality over here (indicating)? Was it not here (indicating)? It is here (indicating on Ex. "G"), isn't that it?

A. It was about there (indicating).

Q. Here is the garage (indicating);—I don't know when these pictures were taken—here's the garage (indicating); here's the house (indicating); now, where is the sign, over on the other side of the garage?

(Testimony of Lucy McGuire.)

A. I know there was one but I don't remember where.

Q. You remember definitely there was a big "No Trespassing" sign?

(There was no answer.)

Redirect Examination

By Mr. Young:

Q. How big was the sign?

A. It was a big board.

The Court: The Court will adjourn on Mr. Dwight's representations until 9:00 o'clock. The jurors are under the same instructions not to discuss the case. [210]

Mr. Young: May the records show the Territory's objections?

The Court: The record may so show. Adjourn until tomorrow morning at 9:00 o'clock.

(A recess was taken until Tuesday, February 8th., 1938 at nine o'clock a. m.) [211]

Honolulu, T. H. Feb. 8, 1938.

(The trial was resumed.)

The Clerk: Territory of Hawaii vs. Ilene "Speed" Warren, further trial by jury.

Mr. Young: Ready for the Territory.

Mr. Dwight: We are ready for the defendant.

Mr. Young: Stipulate the defendant and jury are present.

Mr. Dwight: It may be so stipulated.

The Court: Let the record show that it is stipulated the defendant and the jury are present and both counsel are ready.

EDWARD J. BURNS,

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Young:

Q. Mr. Burns, will you please draw, if you can, a rough diagram of what you know about this house, from what you saw that night?

Mr. Dwight: May he draw a plan before it is shown to the jury? I might want to cross examine him before it is shown to the jury.

The Court: Turn the board.

(The blackboard was turned with the back of same towards the jury.)

By Mr. Young:

Q. Mr. Burns, if possible, draw it with Muliwai street on the top, that is, in the same relation as this big diagram. [212]

The Court: Let the records show that Mr. Burns is still on direct examination.

A. (The witness draws on a sheet of paper.)

By Mr. Young:

Q. Is that the part that you know of that house?

A. Yes.

(Testimony of Edward J. Burns.)

Mr. Dwight: May I be permitted to cross-examine him as to his knowledge of the diagram?

The Court: Yes.

Cross Examination

By Mr. Dwight:

Q. Mr. Burns, is that the plan of the house as you remembered it from experience in going in there? A. Yes.

Q. Did any of this knowledge come to you by virtue of your second entry some time after 12:00 o'clock at night? A. No, sir.

Q. Just your first entry?

A. That is right, sir.

Q. And you never checked maps in the Building Inspector's or in the District Attorney's office?

A. I didn't check any maps.

Q. You never checked any maps?

A. I never checked any maps from the District Attorney's office. I saw a map of the floor plan of the house.

Q. Where did you see that map of the floor plan of the house?

A. At Mr. Young's office. I checked it.

Q. That is where you gathered that information? [213] A. Yes.

Q. Well, did that help you out in drawing this plan today? A. I wouldn't say so.

Q. Was your memory any better on that at 9:00 o'clock on the morning of January 24, 1938, than it is today, or is your memory better today?

(Testimony of Edward J. Burns.)

A. I would say that it is about the same.

Q. It is about the same, and when you drew the plan on January 24, you say your memory was just the same?

A. I would say about the same.

Q. Did you examine any of these inside plans between January 24th and the time you took your oath here yesterday? A. Yes.

Q. When did you examine the inside plan of the house? A. I saw one this morning.

Q. This morning? A. Yes.

Q. You saw that in Mr. Young's office?

A. Yes.

Q. You checked the plan rather carefully?

A. No.

Q. Just looked at it? A. That is correct.

Mr. Dwight: That is all. I am going to object, may it please the Court.

Mr. Young: I haven't finished with this.

Direct Examination

(Continued)

By Mr. Young:

Q. Mr. Burns, what you have drawn on the board, is this from your own memory of what you saw that night on your first entry, or has it been influenced by any diagrams or [214] plans you have seen?

A. I would say that is from my own memory.

Q. You haven't drawn a complete plan of the house? A. No.

(Testimony of Edward J. Burns.)

Q. Why haven't you filled that in?

A. I didn't see those at that time.

Q. On cross-examination you testified you drew another plan. Was that as carefully drawn as this is? A. No.

Q. Did you use any ruler to draw that plan?

A. I don't think so.

Q. Just free hand? A. Yes.

Q. To your best recollection, is that a correct plan? A. Yes.

Mr. Young: I submit he is qualified.

Mr. Dwight: I object on the ground he has used other information other than the information at the time of his entry.

The Court: Objection overruled.

Mr. Dwight: Exception noted.

The Court: Exception noted.

Mr. Young: May this be marked Territory's next exhibit for identification?

The Court: It may be entered as "Prosecution's Exhibit K for identification."

(The diagram referred to was marked
"Prosecution's Exhibit K for Identification.")

[215]

Mr. Young: (To the jury) Can you gentlemen see these marks from the back there?

(Some of the jurors nodded in the affirmative)

Q. Now, Mr. Burns, is this Muliwai street up here (indicating on Exhibit "K.")? A. Yes.

(Testimony of Edward J. Burns.)

Q. Will you please mark with this pencil where the front door in that house is?

A. (The witness marks as directed.)

Q. Now, on your direct examination you testified something about stairs. Will you indicate on this diagram where these stairs are that you were testifying to?

A. (The witness marks as directed.)

Q. Now, what is that writing you are putting on the board at those different places?

A. This is a stairway that leads from the hallway to a room upstairs (indicating on Exhibit "K".) This is a back stairs that leads from the hallway to some place upstairs (indicating on Exhibit "K".)

Q. Do you know where it leads?

A. No, sir.

Q. Now, will you just follow the other line you have on the board and explain to the jury what they are?

A. This is a hallway, (indicating) to which entrance is gained by the front door. This is a doorway to the room upstairs (indicating.) This is a doorway that leads from the hallway into the living-room (indicating.) This is a doorway that leads into the little room that Miss Penland and I went. This is another doorway (indicating.) This is a hallway in the back of the house. [216]

Q. You do not have any other rooms here. Do you know whether there are any other rooms there or not?

A. No.

(Testimony of Edward J. Burns.)

Q. You have two openings in these rooms here (indicating.) What do they represent?

A. This is the front door (indicating); this is the back door (indicating.)

Q. Now, Mr. Burns, you came into the house, you testified, and met a person by the name of Billie Penland?

A. That is right, sir.

Q. Will you please trace the course that you took on the bottom floor of that house with Billie Penland with this blue pencil? Just draw the course you took from the front of the house.

A. Miss Penland met me at the front door here, (indicating) I followed her through this doorway into the living room. We stopped by a wicker table that was located about here (indicating) and we continued on. She led me into this room here (indicating.) (The witness traced in blue pencil the course he took.)

Q. Will you mark that room? What is it, bedroom?

A. Yes. It is probably used for a bedroom. There is a bed in there.

Q. Just put "Bed" in there.

A. (The witness writes "Bed" as directed.)

Q. Now, you testified as you came into that room, you saw two other men in there?

A. That is right, sir.

Q. Do you recall how these men were dressed?

A. I believe both of them were dressed in civilian [217] clothes.

(Testimony of Edward J. Burns.)

Q. Will you just put a circle just where each man was, as you recall?

A. (The witness draws circles as directed.)

Q. Now you testified you were in a room.

Mr. Dwight: You mean these circles?

By Mr. Young:

Q. The Circles represent two men?

A. Sitting down.

Q. That is your approximate location, each circle represents a man?

A. Yes.

Q. Now, after you were in this room, with a bed in there, a short time, you blew your whistle, is that correct?

A. That is correct.

Q. What door did Marjorie Scott come through, that you testified in your direct examination?

A. Marjorie Scott came through the front door.

Q. She is the first person that came into the room after you blew your whistle?

A. She is the first person that came, but didn't come in.

Q. How long after you blew your whistle did she make an appearance at that door?

A. About five seconds.

Q. Did any one else come to any door while you were in that room?

A. "Speed" Warren came through the back door of the bedroom. [218]

Q. About how long after you had blown your whistle?

A. About ten seconds.

(Testimony of Edward J. Burns.)

Q. About ten seconds. Is that your best judgment? A. Yes, sir.

Q. She came to the back door. What did she do, if anything?

A. She came in the back door, told Miss Penland to get out of there. I advised her Miss Penland was under arrest; that I was a police officer. She insisted on Miss Penland leaving the room. I tried to detain Miss Penland by holding her. "Speed" Warren grabbed hold of my arms. Miss Penland ran out the front door of this room, ran toward the hallway, and I followed her. Miss Penland reached in the hallway and turned towards the front door and then turned back to the back stairway, and I caught her right here, when she turned back to the back stairway.

Q. What were you doing in the hallway after you caught her?

Mr. Dwight: May I have the last answer?

(The last answer was read.)

By Mr. Young:

Q. Did you follow Miss Penland through the living room, going back to the door?

A. That is right, sir.

Q. About how far behind her were you as she was running across the room towards the front door?

A. As I say, she was about here (indicating) and I came to the door, about the middle of the room, approximately twelve feet.

(Testimony of Edward J. Burns.)

Q. Approximately twelve feet. Did you gain on her, [219] catch up to her as she reached the hallway?
A. Yes, sir.

Q. Did you ever lose sight of her for any time as she was running across the room?

A. No, sir, I did not lose sight of her.

Q. Did you see her at all times?
A. Yes.

Q. You can take the stand, now. Was she within your full view all the time that she was in the hallway?
A. Yes, sir.

Q. Now, when you say "Speed" Warren came into the room, who do you mean?

A. Ilene Warren, the defendant.

Q. Is she here this morning?
A. She is.

Q. Had you ever seen her before that time?

A. No, sir.

Q. Can you identify her now?
A. Yes, sir.

Q. Will you indicate where she is?

A. Sitting over there dressed in white (indicating the defendant.)

Mr. Young: Let the record so show.

The Court: The record will so show.

By Mr. Young:

Q. When you indicated you were a police officer did you do anything or say anything else?

A. At the time we were in that bedroom?

Q. Before Miss Penland ran out?

A. I told Miss Penland she was under arrest. I had [220] my badge in my left hand when she came

(Testimony of Edward J. Burns.)

at me. I didn't show it up to her face. When she came at me I had it in my left hand. I placed it on the bureau. She grabbed hold of my hand. I stated in my last testimony in the case that it seems to me that I believe she had seen it.

Q. Now, approximately how long did you struggle?

Mr. Dwight: I am going to move to strike that portion of the witness' answer where he says he believes she *showed* it.

Mr. Young: I have no objection.

The Court: The jury will be instructed to disregard that.

By Mr. Young:

Q. Approximately how long, to your best recollection, did you struggle with "Speed" Warren in the bedroom?

A. That was probably about from the time that she started struggling with me, sir, and the time I left her and started chasing Miss Penland.

Q. Yes.

A. That would have been about five seconds.

Q. From the time you started to struggle with her and you left to go and follow Billie Penland?

A. Yes, sir, that would be about five seconds.

Q. Was Billie Penland there some of the time that you were struggling with her?

A. She was.

Q. And then, I understand, you broke loose and followed Billie Penland?

(Testimony of Edward J. Burns.)

A. That is right, sir.

Q. Now, you caught up, you say, again to Billie [221] Penland in the hallway? A. Yes, sir.

Q. Did you see "Speed" Warren again at any time after you had seen her at the bedroom?

A. After I reached in the hallway, when I secured Miss Penland, that is, I held her by the arm and after I had heard the pounding sounds on the doorway and Captain Caminos' voice saying, "Open up, police officers", then I turned to the front door, "Speed" was already there.

Q. Do you know how she got to the hallway from the bedroom? A. No, sir.

Q. Did you see her at any time crossing the room? A. No, sir.

Q. I understand you just saw her at the bedroom and later on saw her at the hallway when you turned around for Billie Penland, is that correct?

A. That is correct, sir.

Q. What happened while the three of you were there in the hallway? Will you tell us what happened from that point on, if anything?

A. Yes, after I secured Miss Penland and I heard the pounding sounds on the door, heard Captain Caminos' voice, "Open up "Speed", police officers", I turned to the front doorway. "Speed" Warren was standing at the doorway on my left-hand with her back towards me, her left arm was reaching inside the doorway leading upstairs with her hand behind the casing, so that I could not see it.

(Testimony of Edward J. Burns.)

She gave a downward motion of that hand, [222] resembling someone pulling a light cord. I then reached for her to pull her away from the door to open the door. She grabbed hold of my arm. In the mix-up Billie Penland got away. I turned around—before turning around I told “Speed” Warren that I was a police officer; that she was under arrest for assault and battery in this case. I turned around to see where Miss Penland had gone and I believe I saw her running—I saw her running up the back stairs. I turned around again to open up the front door and “Speed” was at the front door, trying to lock it. I pulled her away from the front door and opened it about six inches. Captain Caminos was the first one to come in the doorway.

Q. At the time that the door opened who was closer to the front door, you or “Speed”?

A. We were both about the same distance from the front door, sir.

Q. Who was the closest to the door leading up on the righthand going up the stairs?

A. At the time I opened the front door I was.

Q. Here’s the front door here (indicating); who was closest to this stairway at the time the front door opened?

A. I was.

Q. You were? A. Yes, sir.

Q. What did you do after the door, just right after the door opened?

A. Stepped back, sir.

Q. Stepped back which way? [223]

A. Towards the back stairway.

(Testimony of Edward J. Burns.)

Q. Will you just indicate on the map where you stepped?

A. When I opened the front door, I was standing just about here (indicating), in the middle of the doorway; of course, a little bit back (indicating on Ex. "K") I shoved it a little bit, opened it about six inches. "Speed" was standing about here (indicating). I stepped back from the front doorway. "Speed" crossed over to this side (indicating on Ex. "K") and Captain Caminos came to the door.

Q. Will you please place an "X" where you saw "Speed" Warren's hands in this pulling motion that you have stated?

A. (Marking "X" on Ex. "K") Here, sir.

Q. I understand that was before the door opened?

A. That is right, sir.

Q. Just when she was at that position, where were you?

A. I was about here, sir (indicating on Ex. "K").

Q. And where was Billie Penland?

A. About here (indicating on Ex. "K").

Q. And "Speed" was over near here (indicating)?

A. She was standing about here (indicating on Ex. "K").

Mr. Dwight: Better mark that.

Mr. Young: Does your Honor mind if we just use this door? (indicating the door back of the Court.)

(Testimony of Edward J. Burns.)

Mr. Dwight: For what?

Mr. Young: Just to illustrate the way she had her hand behind the door. [224]

Mr. Dwight: I am going to object. I don't think they should come in here and renig. He testified twice and both times it is different. I object.

The Court: The Court will overrule the objection and allow the witness to demonstrate with this door.

Mr. Dwight: May I save an exception?

By Mr. Young:

Q. Assume, Mr. Burns, that is the door going up and a hallway on the righthand side (referring to same door.) Will you just illustrate the way you saw "Speed" Warren open the door?

A. (The witness leaves *witness and* is at door back of the Court.) This would be the front door (indicating); this would be the stairway (indicating).

The Court: Open that door.

Mr. Young: (To the Clerk) Mr. Wilder, hold that open temporarily. (Mr. Wilder complies.)

Q. You just take the position that "Speed" Warren was in when you saw her do this?

A. (Demonstrating) She was standing; this would be the front door (indicating); this would be the stairway leading upstairs (indicating); she was standing like this, peering out the glass in the front door, her left arm was up like this (demonstrating a position, reaching with lefthand towards the upper outside of door panel.)

(Testimony of Edward J. Burns.)

Mr. Dwight: Come out and show your arm so the jury can see the position.

A. Out like that (demonstrating). [225]

By Mr. Young:

Q. Did you see her hand? A. No, sir.

Q. How much of her arm did you see?

A. I would say a little bit, from the wrist, sir.

Q. So you just saw it inside the sill, like you have it there? A. Yes.

Mr. Young: That is all.

Cross Examination

By Mr. Dwight:

Q. May I cross examine on that point while he is there to save the trouble of coming back—you coming back again? Mr. Burns, will you demonstrate just exactly what you saw? How was Mrs. Warren's arm when you saw her?

A. Like this (demonstrating.)

Q. She was peering out of the door?

A. That is right, sir.

Q. What was this pulling of a string that you demonstrated? A. It was a downward motion.

Q. Demonstrate to the jury.

A. If the jury was in my place, she would be standing like this (demonstrating.) They would see her arm come down something like that (demonstrating).

Mr. Dwight: That is all.

(The witness resumes the witness stand.) [226]

(Testimony of Edward J. Burns.)

Direct Examination

(Continued)

By Mr. Young:

Q. Now, to your best recollection, Mr. Burns, how long did this struggling take place in the hall from the time you entered there until the front door opened, your best recollection?

A. From the time I entered the hallway until I opened the front door.

Q. When you came back here (indicating on Ex. "K") and the front door opened, about how long a time transpired?

A. That would have been somewhere around ten seconds, sir.

Q. About ten seconds. Now, Mr. Burns, why did you blow your whistle in the bedroom?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial.

Mr. Young: It is very competent, Your Honor. I submit the question.

Mr. Dwight: I submit it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Dwight: Exception.

A. I blew the whistle—I blew the whistle in the bedroom because that was a prearranged signal between Captain Caminos and his men and myself; that they were then to raid the house.

Q. Was anything happening in your presence?

(Testimony of Edward J. Burns.)

Mr. Dwight: I move to strike that answer as incompetent, irrelevant and immaterial, as prejudicial to the defendant and as incompetent [227] upon the ground that no valid arrest had been made and no felony had been committed according to the evidence of this witness.

Mr. Young: I don't know. If counsel will give me an opportunity to find out why he blew it——

The Court: Objection will be overruled at this time.

Mr. Dwight: Exception.

By Mr. Young:

Q. What was happening in that room that caused you to blow it? That is what I meant by the question.

Mr. Dwight: Objected to as already asked and answered. He has already told the jury why he blew the whistle.

Mr. Young: If Your Honor desires a reason for this question, I will make my offer of proof out of the presence of the jury.

(The jury retired from the court-room.)

Mr. Young: I offer to prove by this witness, if he is allowed to answer the question, that at the time he blew the whistle an act of prostitution was about to be committed; that every preparation had been made and the act was about to be completed. In other words, there was an attempt to commit the crime and it was because of that that he blew

his whistle, in his own mind having an idea that he was going to place her under arrest. This will be very material as to whether the other officers had a right to go on the [228] premises, as to whether they had reasonable grounds in order to assist this officer in making an arrest. We have a right by this evidence to show the frame of mind of this officer and the grounds upon which the other officers acted in making their entry.

Mr. Dwight: I object to that as incompetent, irrelevant and immaterial; upon the ground that the evidence affirmatively shows that the witness—I mean the person in the room had been placed under arrest for investigation and that this is a misdemeanor and that the hearsay evidence, evidence of information, evidence of planning, evidence of general reputation is hearsay and is not a fact which would warrant any officer in entering a house for the purpose of making an arrest on the theory that the crime was committed in their presence. I have two authorities here, if the Court wants to read them, one from the Ninth Circuit Court of Appeals and one from the Eighth Circuit Court of Appeals. The Eighth Circuit Court of Appeals case involved a situation like this. The police had absolute general information that this house was a place of bootlegging. They left the police station for the purpose of raiding. They went down, surrounded the place and sent a man in under a plan by which, if he made the buy, he was

to throw his hat out of the door. He made the buy, threw his hat out of the door. The police officers [229] rushed in. That is illegal.

Mr. Young: As long as it is in the evidence that he placed her under arrest and blew his whistle; that he blew his whistle before he placed her under arrest, I want to know why he blew his whistle.

The Court: The question whether the officers on your authority were trespassers or had reasonable grounds to go in will come up later.

Mr. Dwight: I know that any evidence—to begin with, what his opinion was——

The Court: It is not his opinion but what was in his mind.

Mr. Dwight: That is a conclusion. It is for the jury to determine whether or not under the law there are sufficient facts and for the Court to determine from his own——

The Court: The Court will overrule your objection. Objection overruled.

Mr. Dwight: May I save an exception to that question?

The Court: Exception may be noted.

Mr. Young: Read the last question.

Mr. Dwight: And I cite further authority on the recent Corum decision for the purpose of making my objection at this time.

(The jury returned to the court-room and jury-box.)

(Testimony of Edward J. Burns.)

(The reporter read as follows:)

“Q. What was happening in that room that caused [230] you to blow it? That is what I meant by the question.”

A. An offense had been committed in that room in my presence, the offense of attempted prostitution.

Q. And that is the reason you blew your whistle?

A. That is right, sir.

Q. Do you know this girl Billie Penland, if you saw her again? A. Yes, sir.

Mr. Young: Call Billie Penland in for identification.

(The bailiff responded by bringing a woman into the court-room.)

By Mr. Young:

Q. Do you know this lady (indicating the same person)?

A. That is Billie Penland.

Mr. Young: (To the same person) What is your name? A. Billie Penland.

Mr. Young: Let the record show the identification.

The Court: The record may so show.

Mr. Young: Call Marjorie Scott, please. Call Marjorie Scott in here.

(The bailiff responded by bringing a woman into the court-room.)

(Testimony of Edward J. Burns.)

By Mr. Young:

Q. You see this girl here (indicating the same person)? A. Yes, sir.

Q. Do you know who she is?

A. That is Marjorie Scott.

Q. That is the person that you named in your evidence? [231] A. Yes.

Mr. Young: (To the same person) What is your name? A. Marjorie Scott.

Mr. Young: Let the record show the identification.

The Court: Let the record so show.

By Mr. Young:

Q. Can you give us your best estimation of the time it was altogether from the time you first blew your whistle until the front door opened?

A. You mean the time that elapsed, sir?

Q. Yes, approximately.

A. Approximately half a minute, sir.

Mr. Young: Approximately half a minute. Will the Court excuse me to check my minutes?

Q. Did you touch any switch at any time while you were in the hallway? A. No, sir.

Mr. Dwight: Objected to as leading.

The Court: Objection sustained.

Mr. Dwight: I ask that the answer be stricken and the jury instructed to disregard it.

The Court: Has he answered it? The jury is instructed to disregard it.

(Testimony of Edward J. Burns.)

By Mr. Young:

Q. Mr. Burns, while you were in the hallway, did you touch anything in the hallway other than Billie Penland and "Speed" Warren?

A. I touched the front door.

Q. You touched the front door. Anything else?

[232]

A. I believe that is all, sir.

Q. I will ask you whether or not you at any time put your hand into the hallway there where you saw "Speed" Warren put her hand?

Mr. Dwight: Objected to as incompetent, irrelevant and immaterial; upon the further ground that the question is leading.

Mr. Young: It is leading. I want to call the witness' attention to the fact somehow—submit it, your Honor.

The Court: The Court will sustain the objection to the form of the question. If you will ask him if he at any time went into that entrance where the stairway was and not limit it to his hand.

By Mr. Young:

Q. Mr. Burns, did you at any time go up those stairs on the righthand side?

A. Not from the time of my first entry to my leaving the place with Captain Caminos afterwards with "Speed" Warren, nor did I touch any—touch the switch that was placed up near the place at the beginning of the stairway, at the foot.

Mr. Dwight: Q. You say you didn't?

(Testimony of Edward J. Burns.)

A. At no time. I didn't know that it was there, sir.

Mr. Dwight: I am going to move to strike that answer on the ground that it was suggested by the last leading question, incompetent, irrelevant and immaterial and leading for that reason.

The Court: The court will overrule the [233] objection.

Mr. Dwight: Save an exception.

The Court: Exception may be noted.

Mr. Young: Your witness.

Cross Examination

(Continued)

By Mr. Dwight:

Q. Mr. Burns, how long have you been a police officer?

A. About a year and three months.

Q. And were you—How long have you been a foot patrolman?

A. I was a foot patrolman. I am still a foot patrolman.

Q. You mean you were commissioned a foot patrolman? A. That is right.

Q. Were you assigned to any duties, commonly called "stool-pigeoning"?

A. No, not when I first came in. I was assigned immediately.

Q. When did you start to be a "stool-pigeon", as we term it? A. I never did.

(Testimony of Edward J. Burns.)

Q. You were never sent in to do under-cover work in cases?

A. I was detailed specially by Captain Caminos.

Q. That was the only time?

A. There was one time previously. I do not recall the date.

Q. Now, Mr. Burns, before you became a police officer, what was your occupation? [234]

A. I was a truck driver at the Express Agency.

Q. How long did you work there?

A. About two years.

Q. Before that what was your occupation?

A. I worked for the City and County for a short period.

Q. What Department?

A. Building Inspector's Department, and prior to that I worked at Honolulu Dairymen's Association as a driver-salesman.

Q. Prior to that?

A. Prior to that I worked as a stevedore for Matson Navigation, as a clerk at the piers for Matson Navigation Company and Dollar Steamship Company; worked at Hawaiian Pines during several summer seasons.

Q. Did you go to school here? A. Yes.

Q. Born here?

A. Born in the States but I was raised here.

Q. Now, Mr. Burns, did you know Miss Penland before you went to the Warren house?

A. No.

(Testimony of Edward J. Burns.)

Q. How did you know her name was Penland?

A. I was informed afterwards.

Q. So you didn't know who she was when you went in there? A. No.

Q. When were you informed her name was Penland?

A. I believe Detective Quinn told me that when I was making out my report. [235]

Q. When you testified on direct examination Miss Penland came down—

A. Quinn subsequently told me it was Penland. She was later identified and called herself Penland.

Q. Quinn told you? A. Yes.

Q. Who assigned you to this duty?

A. Captain Mookini.

Q. Captain Mookini? A. That is right.

Q. And he assigned you to Captain Caminos?

A. Yes, but that was indirectly.

Q. Who told you to leave Honolulu and go out and raid "Speed" Warren's?

A. Captain Caminos.

Q. Captain Caminos. What did he tell you, to raid the place?

A. He told me to go along; he wanted to get evidence of prostitution; they were running a house of prostitution.

Q. That was your instruction, to go along and get the evidence? A. That is right.

Q. That was all the instruction he gave you?

(Testimony of Edward J. Burns.)

A. He told me if I could get in the room with a girl and she was undressed and I was undressed the evidence would be more conclusive.

Q. You went in and got undressed?

A. Yes.

Q. Did you intend to have intercourse with that girl that night? [236] A. No.

Q. Never intended to do it?

A. I did not.

Q. When you walked in there you had no idea of committing fornication?

A. It would have been adultery. I am married.

Q. You never intended to do it?

A. No.

Q. You never had any idea of doing anything which would be considered evidence of prostitution?

A. Not of committing the actual act.

Q. Not of committing the actual act? And you didn't commit the actual act? A. No.

Q. And you blew your whistle when you knew that no act of prostitution had been committed?

A. There was an attempt at it.

Q. You meant to compel her to commit prostitution? A. By both of us.

Q. By both of you. You considered that an attempt? A. Yes, sir.

Q. So you blew your whistle?

A. That is right.

(Testimony of Edward J. Burns.)

Q. You had her arrested?

A. I arrested her.

Q. And you were naked at the time?

A. I was.

Q. You say you reached over and picked up a handkerchief, as I remember it?

A. I reached in the inner breast pocket of my coat [237] that was lying on the bureau and picked up my handkerchief.

Q. Where was the badge, inside the handkerchief? A. That is right.

Q. Where was the whistle, inside the handkerchief? A. Yes.

Q. You blew the whistle with the handkerchief up?

A. No, sir, I took the handkerchief away.

Q. Now, Mr. Burns, you say you left the policemen, the other officers somewhere along here (indicating on Ex. "A".) You indicated somewhere along here (indicating.) Where did you leave them?

A. Down on Kuahiwi Avenue where the railroad tracks start.

Q. Here (indicating on Ex. "A".) ?

A. That is right.

Q. Here is where you left the police officers?

A. That is right.

Q. You went up and went along here (indicating) and came to the door and knocked at the door?

(Testimony of Edward J. Burns.)

A. I didn't go up the railroad track; I went up Neal Avenue.

Q. You went up Neal Avenue and you knocked?

A. Yes, sir.

Q. Nobody answered? A. No, sir.

Q. You walked around the house?

A. I walked to the road and walked to the side of the house to see if there was another entrance.

Q. Then you came back to the house again and knocked? [238] A. That is right.

Q. So you went there twice and knocked?

A. That is right.

Q. You recall testifying in this same matter a few days ago on the Motion to Suppress?

A. Yes, I testified.

Q. You remember testifying that you went up to the door and knocked and you were admitted by a woman whom you did not know?

A. Yes, I testified to that.

Q. You never testified about the two times you went there?

A. At the time that Prosecutor Cassidy asked me to relate the circumstances he said to do so briefly. I didn't believe it was necessary at the time.

Q. You did not believe it was necessary. Well, you recall Mr. Cassidy asking you this question: (Reading) "Question: You all went to 'Speed' Warren's place?" You remember that question?

(Testimony of Edward J. Burns.)

A. He may have asked something like that. I don't recall the exact question.

Q. Your answer was: (Reading) "We all went there, not all together"?

A. I went there by myself.

Q. (Reading) "You were assigned to go in?"; the answer was "Yes"?

A. Yes.

Q. (Reading) "When you got there, tell us briefly what you did from the time you got there." You remember that question? [239]

A. Something like that, yes.

Q. (Reading) "I went to the door of her house and knocked there and was admitted by a woman named Florence Penland".

A. That is right.

Q. That is right. You never testified about your first visit, that you knocked and nobody answered and that you went around to the side of the house and then came back?

A. No, I didn't.

Q. Now, you didn't think that was necessary, in your opinion, to tell all the facts?

A. At the time he asked me to give him the events briefly; I didn't believe it was necessary.

Q. So you went into the house?

A. I was admitted into the house.

Q. And the only woman you saw was this Penland woman?

A. That is right.

Q. You walked through into a room?

(Testimony of Edward J. Burns.)

A. Walked through the living room into that back bedroom.

Q. You started to take off your clothes?

A. That is right.

Q. You stripped down until naked?

A. At the time, yes.

Q. And she was sitting there on the bed, as I remember your testimony?

A. That was after she had gone out twice.

Q. You testified she went out twice?

A. That is right. [240]

Q. Somebody spoke to her from one door; somebody spoke, she went out with wash basin, then somebody came, then she went to the back door of the room and had a conversation with somebody; she stepped out of the room, she came in again; somebody came to the front door of the room and a few words were passed?

A. Then she took off her robe and I arrested her.

Q. What did you arrest her for?

A. For attempted prostitution, sir.

Q. What did you arrest her for?

A. You mean what did I say?

Q. Yes.

A. I stated I was a police officer; I was placing her under arrest for investigation.

Q. You told her you were placing her under arrest for investigation? A. Yes.

(Testimony of Edward J. Burns.)

Q. Not you were placing her under arrest for attempted prostitution?

A. That is right.

Q. Whom did you talk to between January 29th and the time that you took the stand today about what you were arresting her for? Whom did you discuss the case with?

A. I discussed the case with Mr. Young. That fact was not mentioned.

Q. That fact was not mentioned? A. No.

Q. Can you give any reason for switching your testimony that you placed her under arrest for investigation and the other one was because she attempted to commit [241] prostitution?

Mr. Young: I object to this as a misstatement of the evidence.

By Mr. Dwight:

Q. You are talking about what was in your mind?

A. That is just what I was going to tell you.

Q. It was in your mind to arrest her for attempted prostitution? A. That is right.

Q. You told her she was arrested for investigation? A. That is right.

Q. You told her nothing else?

A. That is right.

Q. You had to pass an examination to be a police officer? A. Yes.

Q. You ever read the law on the arrest and how to make the arrest? A. Yes.

Q. And that is your answer? A. Yes.

(Testimony of Edward J. Burns.)

Q. And you passed the examination?

A. Yes.

The Court: The Court will take a short recess. It is ten after ten.

(A brief recess was taken.)

(The last question and answer were read.)

By Mr. Dwight:

Q. Now, after you blew your whistle, Mr. Burns, you said Marjorie Scott came to the door? [242]

A. Came to the front door of the bedroom.

Q. Who told you her name was Marjorie Scott?

A. I was informed later on and I also had seen her before; in fact, I had a little case with her, but the name was different.

Q. Well, when were you informed her name was Marjorie Scott? Was it yesterday when you talked to Mr. Young?

A. No, sir, sometime prior to making my report on the 4th I asked Detective Quinn what her name was.

Q. You were informed sometime before making your report? You are sure of that? A. Yes.

Q. It wasn't subsequent to January 29, 1938, that her name was Marjorie Scott? A. No.

Q. Do you recall testifying in this court on January 29th? A. Yes.

Q. Do you recall testifying that after you blew your whistle——

Mr. Dwight: May I have just a moment, your Honor?

(Testimony of Edward J. Burns.)

The Court: Certainly.

Mr. Dwight: I withdraw that question for the time being. (Examining transcript.)

Q. Do you recall testifying before this Court that a woman came to the door, whose name you didn't know? A. I don't.

Q. You don't recall testifying to that?

A. No. [243]

Q. The woman that came to the front door?

A. I don't recall testifying.

The Court: The front door of the bedroom?

Mr. Dwight: The front door of the bedroom.

A. I don't recall testifying to the fact that I didn't know her name.

By Mr. Dwight:

Q. Now, you also testified on direct examination that there were two men in the parlor downstairs; one man's name was Erpelding. You recall testifying to that?

A. His name was Erpelding.

Q. Well, Erpelding, you testified about Erpelding on January 29th?

A. I don't recall if I testified.

Q. You remember testifying that there were some soldiers there? You didn't know their names.

A. I testified there were two men that I didn't know.

Q. You didn't know?

A. I may have testified to Mr. Erpelding's name. He was there after I left the room.

(Testimony of Edward J. Burns.)

Q. You have a definite recollection of giving Mr. Erpelding's name? A. No, I don't.

Q. That was on January 29th, a couple of weeks ago?

A. I don't recollect whether I gave his name or not.

Q. When Marjorie Scott came to the front door, Mr. Burns, what did she do, just look in or say something?

A. The front door of the bedroom?

Q. Yes, I am talking about Marjorie Scott, the one [244] you called Marjorie Scott.

A. After the whistle was blown?

Q. At any time.

A. When she came to the front door after the whistle was blown she just looked in.

Q. She just looked in; you did not place her under arrest?

A. Yes, I stated I believe I did and it was stricken.

Q. Did you or did you not place her under arrest? A. I cannot state definitely, sir.

Q. You say she came and looked in the door and left? A. That is right.

Q. You don't recall whether you placed her under arrest or not? A. That is right.

Q. Then you say Mrs. Warren came in the back door of the bedroom? A. Yes, sir.

Q. And that was sometime after Marjorie Scott looked in the front door of the bedroom?

(Testimony of Edward J. Burns.)

A. Probably a little more than five seconds.

Q. What did Mrs. Warren say to you right off the bat when she came in?

A. "What is the big idea of breaking into a respectable house this way?"

Q. That was her first statement to you?

A. Yes.

Q. Did she request that you get out of her house?

A. I don't recall her saying that.

Q. You deny that she told you to get out? [245]

A. I do.

Q. That is all you recall her saying, "What do you mean by coming and breaking into a respectable house?"

A. She said other sentences to that effect also.

Q. What was that answer?

A. She said other sentences or phrases to that effect also, "The idea of breaking in here"; something like that, sir.

Q. Now, you don't recall whether Mrs. Warren saw your badge or not?

A. I stated that I did not show it to her.

Q. You stated you did not show it to her?

A. That is right.

Q. You put it on a dresser, I think you testified on direct examination?

A. Top of the dresser.

Q. Then she told you—Then you folks got into a fight, you and Mrs. Warren?

(Testimony of Edward J. Burns.)

A. It was not a fight, a scuffle.

Q. A scuffle. Who hit first?

A. There was no hitting done.

Q. No hitting. What did you do in this scuffle?

A. She grabbed hold of my arms when I attempted to hold Billie Penland from running out of the room.

Q. When she grabbed hold of your arms, did she tell you to get out of the house?

A. No, sir.

Q. She did not? A. No.

Q. The three of you were fighting in this room?

[246]

A. Billie Penland wasn't in the scuffle.

Q. She was not in the scuffle. Were you holding onto Billie Penland?

A. I grabbed hold of her once and shoved her back on the bed.

Q. When was that?

A. When she got off the bed and attempted to run out of the room and after "Speed" told her to get out the room.

Q. And then you and "Speed" were hanging on to each other?

A. She grabbed hold of my arms so I pushed loose. Billie Penland ran out of the front door. I twisted my arms loose from "Speed" and chased after the girl.

Q. You were directly back of Billie Penland; as soon as Billie Penland went out of that front

(Testimony of Edward J. Burns.)

door of the bedroom and started out, you could see her?

A. Why, yes, I saw her running; she was in the middle of the room.

Q. You went across this room (indicating on Ex. "K"), when you got to point that you indicated along here, indicating a point after coming out of this door, you caught up to Billie Penland?

A. That is right.

Q. Did you run? A. Yes, I chased her.

Q. You chased her and when you got out here (indicating on Ex. "K"), you testified on direct examination that Mrs. Warren was peering out of the front door?

A. No, sir, I did not testify to that. [247]

Q. Then what did you testify to?

A. I testified to the fact that after I grabbed hold of Miss Penland she struggled a little. Naturally I had to grab probably two or three times before I got a good hold on her. I heard those pounding sounds and Captain Caminos saying, "Open up", then I turned to the front door. I saw "Speed" was already there.

Q. You don't know how she got there?

A. No.

Q. You never saw her coming out of the room?

A. No.

Q. You feel anybody pounding on you, trying to throw you out of the back door? A. No.

(Testimony of Edward J. Burns.)

Q. Did anybody tell you to get some clothes on? You didn't hear those words? A. No.

Q. Well, now, when you say you struggled a little with Billie Penland, you demonstrate just what you did. You grabbed her, you caught up to her and then you grabbed her?

A. That is right.

Q. She stopped right away?

A. She tried to get away.

Q. She tried to get away, then you got a good hold on her? A. Yes.

Q. As far as that incident is concerned, you had Billie Penland? A. Yes. [248]

Q. How long did that take, when you grabbed Billie Penland and you held her firmly?

A. Perhaps two seconds.

Q. You two were scuffling right out here, right there where you indicated at that cross (indicating on Ex. "K")? A. Yes.

Q. Then you glanced to the front door and saw "Speed" peering out about that time?

A. Yes, sir.

Q. Did "Speed" say anything to you at that time or you to her?

A. She may have said something but I did not say anything until I told her she was under arrest for assault and battery.

Q. When did you tell her she was under arrest for assault and battery?

(Testimony of Edward J. Burns.)

A. After she turned towards me, grabbed hold of my arms and clawed at me.

Q. You mean assault and battery upon a police officer? A. That is right.

Q. Prior to that time you don't recall her telling you to get out of the house?

A. She didn't.

Q. She didn't. You do remember her telling you, "What do you mean by breaking into my house, a respectable place?"

A. She said that.

Q. It was after that you told her you placed her under arrest for assault on a police officer?

A. That is right. [249]

Q. Do I understand your testimony to be that after you had a firm hold on Miss Penland out there in front and you peered—you looked out toward the door and saw Mrs. Warren peering out?

A. Yes.

Q. You grabbed her after that?

A. Yes.

Q. What did you grab her for?

A. To pull her away from the door.

Q. What did you pull her away from the door for? A. To open the door.

Q. Did she tell you that she would open the door? A. No.

Q. Did she tell you then to go get some clothes on? A. Oh, no.

Q. You deny that? A. Yes.

(Testimony of Edward J. Burns.)

Q. And for no reason at all, because you wanted to open the door, you grabbed hold of Mrs. Warren and pulled her aside?

A. I didn't. I succeeded in pulling her aside that time.

Q. You reached for her and grabbed her?

A. That is right.

Q. And she turned around and struck you?

A. She didn't strike me.

Q. She clawed at you?

A. That is right.

Q. Then you arrested her, told her she was under arrest for assault and battery on a police officer? [250]

A. That is right.

Q. For what offense were you charging her with assault and battery on a police officer, for the assault inside or the assault outside by the door?

A. The assault outside by the door.

Q. That assault came after you struck her?

A. I did not strike her.

Q. You pulled her and tried to drag her away?

A. I didn't drag her.

Q. Well, pulled her? A. That is right.

Q. Then you say Miss Penland disappeared?

A. She didn't disappear. I saw her at the back stairway when I turned around.

Q. You saw her at the back stairway when you turned around? A. Yes.

Q. You never bothered about chasing after her?

A. No.

(Testimony of Edward J. Burns.)

Q. You were so anxious to open the door and let the police officers in to carry out your plan?

A. That is right.

Q. Did you open the door or did you not open the door? A. I opened the door.

Q. Definitely, you are sure of it?

A. Yes.

Q. Are you positive? A. Positive.

Q. You opened the door and Caminos came in?

A. Yes. [251]

Q. This morning you testified about stepping back.

A. I didn't step back to let her do that.

Q. What did you step back for?

A. To let Caminos in.

Q. To let Caminos see you?

A. To let Caminos in.

Q. You say Mrs. Warren stepped up to the door?

A. She crossed over to the side, to the lefthand side of the door as we were facing it.

Q. In other words, you want this jury to understand by your testimony when you got here (indicating on Ex. "K"), fighting with Miss Penland, after you had pushed Mrs. Warren aside in this bedroom, when you ran out here and caught Miss Penland here (indicating on Ex. "K") and grabbed hold of her and then looked toward the door, you saw Mrs. Warren standing inside the door? A. Standing there, yes.

(Testimony of Edward J. Burns.)

Q. With her lefthand up something like that (demonstrating)?

A. Not quite so high.

Q. Like that (demonstrating)?

A. A little lower.

Q. About like that (demonstrating)?

A. Something like that.

Q. Then you said she was pulling a string or something?

A. I didn't say she was.

Q. A pulling motion?

A. A pulling motion, yes.

Q. Then you also want the jury to understand that [252] you reached for the door?

A. Not immediately. I wanted to get at the door.

Q. You wanted to get at the door. Then after you finally got at the door or while you were facing there at the door, Mrs. Warren had moved over to this side (indicating on Ex. "K") and you had gotten over to that side (indicating)?

A. I had pulled her over to that side.

Q. You grabbed the door knob? A. Yes.

Q. You get any electric shock? A. No.

Q. Then you say you stepped aside and let Mrs. Warren step in front again? That is what you said this morning.

A. I stepped aside.

Q. Do you recall what you said the other day?

A. I don't believe I went into quite so much detail.

(Testimony of Edward J. Burns.)

Q. I see. Do you recall testifying along this line: (Reading) "I then grabbed"—page 6, middle of the page—"I then grabbed her and attempted to pull her away from the door so that I might open it. She grabbed hold of me and I released Miss Penland to cope with "Speed". "Speed" again turned to the door and I turned around to see where the Penland woman had gone. I believe that she was out of sight, so turned back to "Speed" again, who was again with her back towards me and seemed to be fumbling at a lock or latch on the door." Now, what was she fumbling about?

A. Trying to close the hasp, to lock the hasp that was at the door. There was a little hasp by [253] which you could lock the door from inside with a lock, I believe.

Q. And that was a considerable time, then, after this pounding that you heard?

A. No, not a considerable time.

Q. The first thing that you heard after you rushed out with Miss Penland was pounding on the door, wasn't it?

A. No, I wouldn't say that.

Q. You wouldn't say that. Was it about the time that you got out there with Miss Penland?

A. No, you see, after I had secured Miss Penland, I would say just about as I was to turn to the door I heard the pounding sounds and Captain Caminos say, "Open up, police officers". I can't say whether the pounding sounds came first or

(Testimony of Edward J. Burns.)

whether Captain Caminos' voice came first or whether they came together, just how it was.

Q. I am not talking about that. I am talking about the pounding at the time you got out in the hallway.

A. The pounding, as I heard it, was as I turned toward the front door after I had secured Miss Penland.

Q. You knew the police officers were outside in the street? A. Yes.

Q. Less than twenty-five feet from the front door?

A. I don't know if they were out in the street.

Q. You don't know? A. No.

Q. Didn't you talk it over with them? [254]

A. That part wasn't stated.

Q. Did you talk it over after the incident?

A. I didn't ask them where they had stayed, where they were.

Q. And then after you opened the door, say, six inches—— A. About that.

Q. (Continuing) you immediately stepped back?

A. Yes.

Q. Quickly? A. Yes.

Q. Caminos came right in?

A. He stepped up to the door. He might have entered about the doorway; he didn't come exactly all the way in.

Mr. Young: I ask the witness be allowed to answer.

(Testimony of Edward J. Burns.)

Mr. Dwight: The answer is in the record.

Q. Then you say "Speed" was the one at the door?

A. "Speed" was right in front of the door.

Q. Have you talked to anyone about that phase of your testimony, that particular phase of your testimony? A. Yes.

Q. Who did you talk to, Captain Caminos?

A. No.

Q. Were you told that Captain Caminos testified under oath that "Speed" opened that door?

A. No.

Q. Did anybody inform you that Captain Caminos testified under oath that "Speed" opened that door? A. No. [255]

Q. Nobody told you that? A. No.

Q. Never heard about it? A. No.

Q. Never heard anything about it like that?

A. No.

Q. You recall testifying on the hearing here that you went there and opened the door? You testified along that line, you went up there, grabbed the latch, opened the door and Captain Caminos stepped in; you recall that? A. Yes.

Q. Today you testified that you went up there, opened the door six inches, stepped back so "Speed" could go up there? A. No.

Q. Didn't you testify this morning that you opened the door and you stepped back and that

(Testimony of Edward J. Burns.)

when Caminos came in "Speed" was by the door, closer to the door than you were?

A. We were both about the same distance from the door. She was standing on the lefthand side of the door; I was standing here (indicating on Exhibit "K").

Q. You recall testifying this morning that when Caminos came in Mrs. Warren was on the right, you were on the left? A. I do not.

Mr. Dwight: May we have the record?

The Court: (To the Reporter) Will you refer to that testimony? [256]

Mr. Young: The proper procedure to impeach this witness—

Mr. Dwight: The proper procedure is for me to call the Reporter for the record.

The Court: You are not calling for it now?

Mr. Dwight: I am perfectly willing to pass it for the time being.

The Court: All right pass it for the time being.

(The Reporter later read the excerpt from the record to both counsel in chambers, as quoted on pages 263 and 264 of this Transcript.)

By Mr. Dwight:

Q. When did you first know that the woman was Marjorie Scott? When did you first learn of her name?

A. I don't recall the exact date but I believe I asked Detective Quinn for her name and he gave

(Testimony of Edward J. Burns.)

it to me the next morning while I was writing my report.

Q. Do you recall testifying on the 29th of January if Marjorie Scott ever came in after the whistle was blown?

A. I don't recall whether I testified Marjorie Scott came in after the whistle was blown. I testified to the fact she came to the door after the whistle was blown.

Q. You recall that you did not testify to Marjorie Scott coming in after the whistle was blown?

A. I can state definitely.

Q. Now, you say that you spoke to Mr. Young in connection with that particular phase of the testimony that I have been referring to?

A. Yes. You mean about in the hallway there?

[257]

Q. Yes. A. That is right.

Q. When did you talk to him?

A. I don't recall now whether it was before the dismissal or after, or after the case of dismissal.

Q. Was it after you had testified here?

A. I believe so. That is right; it was afterwards.

Q. And in that conversation with Mr. Young was Caminos' testimony discussed?

A. No, sir.

Q. Wasn't discussed? A. No.

(Testimony of Edward J. Burns.)

Q. Mr. Young never said a word to you about Caminos testifying that he said "Speed" opened the door? A. No.

Q. But you do admit that you discussed that particular phase of the testimony with Mr. Young subsequent to January 29th? A. Yes.

Q. Now when you first had your struggle with Mrs. Warren in the bedroom, you say that that lasted for about five seconds?

A. About that.

Q. And in that struggle Miss Penland got away?

A. At the termination, just before the termination of the struggle.

Q. Just before the termination of the struggle. In other words, when Miss Penland went out you threw "Speed" aside?

A. I twisted my arms loose. [258]

Q. You caught up as she entered the alleyway?

A. She entered the hallway already.

Q. When you grabbed her? A. Yes.

Q. Now, when the front door was finally opened, did you get up there and hold your hands up and say, "Boys, I am balls naked"? A. No.

Q. You didn't have any uniform on or anything like that police station uniform? A. No.

Q. You did not have your badge exposed where people could see it?

A. You mean when I entered the house?

Q. Yes. A. No.

(Testimony of Edward J. Burns.)

Q. Or at any time?

A. Not until I put Miss Penland under arrest.

Mr. Dwight: That is all, your Honor, with the exception of further cross-examination, which I will ask the Reporter to check up during the intermission for a recess and I ask that I be permitted to recall this witness for further cross-examination at that time.

The Court: Any redirect at this time?

Mr. Young: Yes.

Redirect Examination

By Mr. Young:

Q. Mr. Burns, will you give us some idea, from your best recollection, the dimensions of this hallway (indicating on Exhibit "K")? [259]

A. (Referring to Ex. "K" and indicating) That was about five feet wide and seven feet long; the length, from the front of the door to the stairway.

Q. What do you call the length? Will you come down here and indicate?

A. (Stepping down and indicating on Ex. "K") Seven feet from the front door to here (indicating) and about five feet to the foot of the stairway and about five feet from the outside wall of the house to this doorway here (indicating).

Q. Indicating the doorway connected to the stairs going up? A. Yes.

Q. Now, approximately what is your best judgment of the distance from this door, the front door

(Testimony of Edward J. Burns.)

of the bedroom that you were in, to the beginning of the hallway, the number of feet?

A. About 18 feet, sir.

Q. About 18 feet. Take the stand. Would you know this fellow Erpelding? If you saw him, would you? A. Yes, sir.

Mr. Young: Call Erpelding.

(The bailiff responds, bringing into the court-room a gentleman.)

Q. You see this man here (indicating the same person)? A. Yes.

Q. Is he one of the men that you saw in the room, in the parlor? A. Yes.

Q. What position was this man in the room when you [260] saw him?

A. He was seated on this chair over here (indicating on Ex. "K").

Q. That is the chair?

Mr. Dwight: Just a moment. I ask the witnesses be excluded while this testimony is going on.

Mr. Young: Withdraw that last question.

The Court: No question will be asked in the presence of the witnesses.

By Mr. Young:

Q. He is the man that you testified to? (Referring to the same person.) A. Yes.

Q. (To the same person) What is your name?

A. Erpelding.

(Testimony of Edward J. Burns.)

Mr. Young: May the record show the identification of Erpelding?

The Court: The record may so show.

By Mr. Young:

Q. You say that man was there at this point (indicating on Ex. "K") when you saw him?

A. Yes, that is right.

Mr. Young: Indicating the front part of the parlor, facing the front door.

The Court: Just wait until after 11 o'clock.

Mr. Dwight: I will take it up then.

Mr. Young: I would just as soon if counsel wishes. May we have our 11 o'clock recess? I would just as soon have counsel continue with his cross examination before I start with another witness.

The Court: The Court will stand in recess. [261]
(A brief recess was taken.)

In Chambers.

(Both counsel being present in chambers, and the defendant also being present, the following proceedings were had and testimony given):

Mr. Dwight: At this time I would like to move for a continuance upon the ground the defendant is ill. She is now suffering with cramps of a serious nature. She doesn't feel she will be able to stick it out for the remainder of the afternoon.

The Court: Will you swear her?

ILENE WARREN,

called as a witness on her own behalf, being first duly sworn, testified as follows:

Direct Examination

By Mr. Dwight:

Q. Your name is Ilene Warren?

A. Yes, sir.

Q. You are the defendant in this case?

A. Yes.

Q. At the present time you are having your periods, are you not? A. Yes.

Q. Accompanying those periods are you suffering from cramps? A. Yes, sir.

Q. Those cramps are of a rather serious nature?

A. Yes, sir.

Q. You feel that you can't continue sitting in Court for your own health? [262] A. Yes.

Q. You feel it is for your own health that this matter be continued until tomorrow morning?

A. Yes.

Mr. Young: The Territory has no objection.

The Court: Let the record show the Territory has no objection and the Court will continue this case until tomorrow morning at nine o'clock.

(The reporter read as follows from the Direct Examination by Mr. Young of Witness Edward J. Burns):

“Q. What happened while the three of you were there in the hallway? Will you tell us

what happened from that point on, if anything?

A. Yes, after I secured Miss Penland and I heard the pounding sounds on the door, heard Captain Caminos' voice, "Open up, 'Speed', police officers," I turned to the front doorway. 'Speed' Warren was standing at the doorway on my lefthand with her back towards me, her left arm was reaching inside the doorway leading upstairs with her hand behind the casing, so that I could not see it. She gave a downward motion of that hand, resembling someone pulling a light cord. I then reached for her to pull her away from the door to open the door. She grabbed hold of my arm. In the mix-up Billie Penland got away. I turned around—before turning around I told 'Speed' Warren that I was a police officer; that she was under arrest for assault and battery in this case. I turned around to see where Miss Penland had gone and I believe I saw her running—I saw her running up the back stairs. I turned around again to open up the front door and 'Speed' was at the front door, trying to lock it. I [263] I pulled her away from the front door and opened it about six inches. Captain Caminos was the first one to come in the doorway.

Q. At the time that the door opened, who was closer to the front door, you or "Speed"?

A. We were both about the same distance from the front door, sir.

Q. Who was the closest to the door leading up on the righthand, going up the stairs?

A. At the time I opened the front door I was.

Q. Here's the front door here (indicating on Ex. "K"); who was closest to this stairway at the time the front door opened?

A. I was."

In Court.

EDWARD J. BURNS,

a witness called on behalf of the defendant, resumed the stand and testified further as follows:

Cross Examination

(Continued)

By Mr. Dwight:

Q. Now, Mr. Burns, the record here indicates from your questions and answers that when you first saw Mrs. Warren she was on the left of the door, then you further testified that you pulled Mrs. Warren away and you went to the door?

The Court: To the left.

By Mr. Dwight:

Q. To the left of the door, then you said you opened the door. Then you testified that when the door was opened Mrs. Warren was on the left. That is what the record shows. [264]

(Testimony of Edward J. Burns.)

A. I testified that I walked back and she walked over to the left.

Q. You stepped back and then she stepped over to the door. In other words, you just stepped back and she crossed over?

A. She was standing on my righthand side and she crossed over.

Q. After the door was opened you say Caminos stepped in? A. Captain Caminos, yes.

Q. And what did he do?

A. He started to talk with "Speed" Warren. I don't know what he said. I went back in the hallway. I intended——

Q. Never mind what you intended. Tell us what you did.

A. I went back in the hallway. I was going to look for Billie Penland.

Q. When you say the hallway, you mean this square in here (indicating on Ex. "K")?

A. That is right.

Q. What did you do?

A. I looked at the back stairs, the stairway. I looked into the parlor.

Q. Did you go into the parlor?

A. I might have looked. I came back in the hallway; "Speed" Warren went up the back stairs; Captain Caminos went out the front door.

Q. You followed Captain Caminos out?

(Testimony of Edward J. Burns.)

A. Not directly. I followed a few seconds later.

Q. Do you recall testifying in that regard on January [265] 29th?

A. I testified somewhat, something similar to that. I don't recall.

Q. With slight defects? A. No, sir.

Q. Let me put it to you. I think this is your testimony, page 6 (reading from Transcript):

“Captain Caminos entered the hallway and I left the hallway and went into the parlor a few steps, looked up the back stairway, couldn't see the Penland woman, came back into the hallway and followed Captain Caminos outside of the front door.”

A. That is right.

Q. That is your testimony and when you followed him out——

A. When I got outside he was holding Wah Choon Lee.

Q. You followed him out and when you got out there Captain Caminos was holding Wah Choon Lee?

A. I stated a few seconds; I followed him a few seconds later.

Q. That is what I am getting to. Have you discussed that phase of your testimony since you testified on January 29th?

A. No, sir, we discussed the whole incident but we never discussed that particularly.

(Testimony of Edward J. Burns.)

Q. In other words, you testified you followed him out and he told you to go back and put some clothes on? A. That is right.

Q. That is what you testified to before?

A. That is right. [266]

Q. When you followed him out and got out there, he was holding someone by the armpits?

A. He was holding Wah Choon.

Q. That was on the premises of Mrs. Warren?

A. That is right.

Mr. Dwight: I think that is all.

Redirect Examination

By Mr. Young:

Q. Officer Burns, there has been some testimony in this regard, whether you were to the right or left. Will you go over to the board again and show what position you took on the stairway at the time she was at the door, facing out?

Mr. Dwight: He can testify if there has been any misunderstanding about what he meant by right and by left.

Mr. Young: Counsel brought this out on cross. I think this witness has a right to show.

The Court: I believe the evidence is clear.

Mr. Young: Counsel went into that.

The Court: The Court will allow the question.

Mr. Dwight: May I save an exception?

The Court: If the prosecution feels he isn't clear, he has a right to on redirect.

(Testimony of Edward J. Burns.)

Mr. Dwight: Any other testimony, I submit, he can't bring in now. It is improper.

By Mr. Young:

Q. When you testified, tell whether it is on the right or left, whatever day it was.

The Court: Just clear up the question. [267]

A. When I chased Billie Penland into the hallway, she first turned towards the front door, then she turned back to this stairway and I caught her just about here (indicating on Ex. "K"). I was standing with my back this way (demonstrating).

The Court: Indicating what?

A. Back this way; the back of my body would be towards this doorway (indicating).

Q. Which doorway?

A. The doorway leading into the living room. She was standing about here on my righthand side and in front of me (indicating on Ex. "K"). After I secured a good hold of her our positions did not change much while I was securing a hold on her. I turned to the front door, the left of my body and my back was here (indicating on Ex. "K"). I turned to the front door in this space (indicating). "Speed" Warren was standing here (indicating).

The Court: You say "here", indicating what?

A. She was standing at the foot of the stairway.

(Testimony of Edward J. Burns.)

By Mr. Young:

Q. Which stairway?

A. Stairway leading from the hallway to a room upstairs, which stairway is next to the front door. She was standing next to that front door, also facing it and looking out.

The Court: To the right or left of the front door?

Mr. Dwight: To the left of the front door.

The Court: To the left of the front door? [268]

A. To the left of the front door, looking out, and I grabbed her; she turned towards me. I was then facing the front door and her back was towards it. When I released my hold on her and she turned towards the door, I turned to this back stairs and I saw Billie Penland go up and I again turned toward the front door. "Speed" Warren's back was again towards me. She was attempting to close the hasp and lock it. She again turned toward me.

Recross Examination

By Mr. Dwight:

Q. About here (indicating on Ex. "K")?

A. About here (indicating on Ex. "K"). I was then standing here (indicating), facing the front door, grabbed the lock, opened it, shoved it outwards. I stepped back a few steps and Mrs. Warren crossed over in front of me to this spot again (indicating).

(Testimony of Edward J. Burns.)

The Court: Indicating the left.

A. On the lefthand side of the front door as we faced it, and Captain Caminos then entered.

By Mr. Dwight:

Q. While you were here you said that Billie Penland started toward the front door?

A. That is right.

Q. Where were you when she started toward the front door?

A. About here (indicating on Ex. "K"), about two or three feet away.

Q. In the parlor? A. Yes.

Q. How far did she go toward the front door?

A. She took a step toward the front door, then hesitated, [269] then turned around with her back toward the front door and then went up the stairs.

Q. When did you first hear of the hasp on that door? A. I saw it.

Q. You saw it, this little hasp? A. Yes.

Q. You don't know where Mrs. Warren came from, but you could still see the hasp out at the front door. You can't tell this jury how Mrs. Warren got to the front door? A. No.

Q. This room is seven by five? (Indicating on Ex. "K"). A. Yes.

Q. And you didn't see her?

A. No, I was engaged with Miss Penland.

Mr. Dwight: No further questions.

The Court: That is all; Officer Burns excused.